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STATUTES

OF A

GENERAL NATURE

PASSED BY THE

LEGISLATIVE ASSEMBLY OF THE TERRITORY

OF

OREGON:

AT THE SECOND SESSION, BEGUN AND HELD AT OREGON CITY,
DECEMBER 2, 1850

IN THE SEVENTY-FIFTH YEAR OF THE INDEPENDENCE OF THE UNITED STATES

OREGON CITY
ASAHEL BUSH, TERRITORIAL PRINTER
1851

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DECLARATION OF INDEPENDENCE.

JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the State remaining, in the mean time, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these States—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our Legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offences;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments;

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their Legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing Declaration was, by order of Congress, engrossed, and signed by the following members:—

JOHN ADAMS,
SAMUEL ADAMS,
JOSIAH BARTLETT,
CARTER BRAXTON,
CHARLES CARROLL,
Of Carrolton,
SAMUEL CHASE,
ABRAHAM CLARK,
GEORGE CLYMER,
WILLIAM ELLERY,
WILLIAM FLOYD,
BENJAMIN FRANKLIN,
ELBRIDGE GERRY,
BUTTON GWINNET,
LYMAN HALL,
JOHN HANCOCK,
BENJAMIN HARRISON,
JOHN HART,
THOMAS HEYWARD, JR.,
JOSEPH HEWES,
WILLIAM HOOPER,
STEPHEN HOPKINS,
FRANCIS HOPKINSON,
SAMUEL HUNTINGTON,
THOMAS JEFFERSON,
FRANCIS LIGHTFOOT LEE,
RICHARD HENRY LEE,
FRANCIS LEWIS,
PHILIP LIVINGSTON,
THOMAS LYNCH, JR.,
THOMAS M'KEAN,
ARTHUR MIDDLETON,
LEWIS MORRIS,
ROBERT MORRIS,
JOHN MORTON,
THOMAS NELSON, JR.,
WILLIAM PACA,
ROBERT TREAT PAINE,
JOHN PENN,
GEORGE READ,
CÆSAR RODNEY,
GEORGE ROSS,
BENJAMIN RUSH, M. D.,
EDWARD RUTLEDGE,
ROGER SHERMAN,
JAMES SMITH,
RICHARD STOCKTON,
THOMAS STONE,
GEORGE TAYLOR,
MATTHEW THORNTON,
GEORGE WALTON,
WILLIAM WHIPPLE,
WILLIAM WILLIAMS,
JAMES WILSON,
JOHN WITHERSPOON,
OLIVER WOLCOTT,
GEORGE WYTHE.

CONSTITUTION

OF THE

UNITED STATES.

PREAMBLE.

WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

OF THE LEGISLATIVE POWER.

SECTION 1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

OF THE HOUSE OF REPRESENTATIVES.

SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant in that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the

Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

OF THE SENATE.

SECTION 3. The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and have a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments: When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

MANNER OF ELECTING MEMBERS.

SECTION 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

CONGRESS TO ASSEMBLE ANNUALLY.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

POWERS.

SECTION 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secresy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

COMPENSATION, ETC., OF MEMBERS.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

* * *

MANNER OF PASSING BILLS, ETC.

SECTION 7. All bills for raising revenues shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

POWER OF CONGRESS.

SECTION 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

LIMITATION OF THE POWERS OF CONGRESS.

SECTION 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

LIMITATION OF THE POWERS OF THE INDIVIDUAL STATES.

SECTION 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

MANNER OF ELECTING.

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant with the same State as themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members, from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

TIME OF CHOOSING ELECTORS.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE-PRESIDENT.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

PRESIDENT'S COMPENSATION.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

POWERS AND DUTIES.

SECTION 2. The President shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

OFFICERS REMOVED.

SECTION 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting Ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

JURISDICTION OF SUPREME COURT.

In all cases affecting Ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

OF TREASON.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV.

STATE ACTS.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

PRIVILEGES OF CITIZENS.

SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

RUNAWAYS TO BE DELIVERED UP.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NEW STATES.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

TERRITORIAL AND OTHER PROPERTY.

The Congress shall have power to dispose of and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union, a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

AMENDMENTS.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as a part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

DEBTS.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

SUPREME LAW OF THE LAND.

The Constitution and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

OATH.—NO RELIGIOUS TEST.

The senators and representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

New Hampshire.
JOHN LANGDON,
NICHOLAS GILMAN,

Massachusetts.
NATHANIEL GORHAM,
RUFUS KING.

Connecticut.
WILLIAM SAM. JOHNSON,
ROGER SHERMAN,

New-York.
ALEXANDER HAMILTON.

New Jersey.
WILLIAM LIVINGSTON,
DAVID BREARLEY,
WILLIAM PATERSON,
JONATHAN DAYTON,

Pennsylvania.
BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

Delaware.
GEORGE REED,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

Maryland.
JAMES M'HENRY,
DANIEL OF ST. THO. JENIFER,
DANIEL CARROLL.

Virginia.
JOHN BLAIR,
JAMES MADISON, JR.

North Carolina.
WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

South Carolina.
JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia.
WILLIAM FEW,
ABRAHAM BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS

TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED ACCORDING TO THE PROVISIONS OF THE FIFTH ARTICLE OF THE FOREGOING CONSTITUTION.

FREE EXERCISE OF RELIGION, ETC.

ARTICLE THE FIRST. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and petition the government for redress of grievances.

RIGHT TO BEAR ARMS.

ARTICLE THE SECOND. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

NO SOLDIER TO BE BILLETED, ETC.

ARTICLE THE THIRD. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

UNREASONABLE SEARCHES PROHIBITED.

ARTICLE THE FOURTH. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CRIMINAL PROCEEDINGS.

ARTICLE THE FIFTH. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

MODE OF TRIAL.

ARTICLE THE SIXTH. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

RIGHT OF TRIAL BY JURY.

ARTICLE THE SEVENTH. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

BAIL, FINES.

ARTICLE THE EIGHTH. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RIGHTS NOT ENUMERATED.

Article the Ninth. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

POWERS RESERVED.

Article the Tenth. The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

LIMITATION OF JUDICIAL POWER.

[The following amendment was proposed at the second session of the third Congress. It is printed in the Laws of the United States, 1st vol., p. 73, as Article xi.]

Article the Eleventh. The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ELECTION OF PRESIDENT.

[The three following sections were proposed as amendments at the first session of the eighth Congress. They are printed in the Laws of the United States 1st vol., p. 73, as Article xii.]

Article the Twelfth. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such a number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

NOTE.—Another amendment was proposed as Article xiii., at the second session of the eleventh Congress, but not having been ratified by a sufficient number of States, has not yet become valid as a part of the Constitution of the United States. It is erroneously given as a part of the Constitution, in page 74, Vol. I., Laws of the United States.

ORGANIC LAWS OF OREGON.

PREAMBLE.

We, the People of Oregon Territory, for purposes of mutual protection, and to secure peace and prosperity among ourselves, agree to adopt the following laws and regulations, until such time as the United States of America extend their jurisdiction over us.

Be it enacted, therefore, by the free citizens of Oregon Territory, That the said Territory, for purposes of temporary government, be divided into not less than three nor more than five districts, subject to be extended to a greater number when an increase of population shall require.

For the purpose of fixing the principles of civil and religious liberty, as the basis of all laws and constitutions of government that may hereafter be adopted—

Be it enacted, That the following articles be considered articles of compact among the free citizens of this Territory:

ARTICLE I.

Section 1. No person demeaning himself in a peaceable and orderly manner, shall ever be molested upon account of his mode of worship or religious sentiments.

Sec. 2. The inhabitants of said Territory shall always be entitled to the benefits of the writ of habeas corpus and trial by jury, of a proportionate representation of the people in the Legislature, and of judicial proceedings, according to the course of common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishments inflicted. No man shall be deprived of his liberty but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared that no law ought ever to be made, or have force in said

Territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, "bona fide" and without fraud previously formed.

Sec. 3. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall for ever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by the representatives of the people; but laws founded in justice and humanity shall, from time to time, be made for preventing injustice being done to them, and for preserving peace and friendship with them.

Sec. 4. There shall be neither slavery nor involuntary servitude in said Territory, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.

Sec. 5. No person shall be deprived of the right of bearing arms in his own defence; no unreasonable searches or seizures shall be granted; the freedom of the press shall not be restrained; no person shall be twice tried for the same offence, nor the people deprived of the right of peaceably assembling and discussing any matter they may think proper, nor shall the right of petition ever be denied.

Sec. 6. The powers of the Government shall be divided into three distinct departments—the Legislative, Executive, and Judicial; and no person or persons belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted.

ARTICLE II.

Section 1. The legislative power shall be vested in a House of Representatives, which shall consist of not less than thirteen, nor more than sixty-one members, whose numbers shall not be increased more than five at any one session, to be elected by the qualified electors at the annual election, giving to each district a representation in the ratio of its population (excluding Indians), and the said members shall reside in the district for which they shall be chosen; and in case of vacancy by death, resignation, or otherwise, the Executive shall issue his writ to the district where such vacancy has occurred, and cause a new election to be held, giving sufficient notice at least ten days previously, of the time and place of holding said election.

Sec. 2. The House of Representatives, when assembled, shall choose a Speaker and its other officers, be judges of the qualifications and election of its members, and sit upon its own adjournment from day to day. Two-thirds of the House shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members.

* * *

SEC. 3. The House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same offence, and shall have all powers necessary for a Legislature of a temporary government, not in contravention with the restrictions imposed in this Organic Law.

SEC. 4. The House of Representatives shall, from time to time, fix the salaries of the different officers appointed or elected under this compact, provided the pay of no officer shall be altered during the term of his service; nor shall the pay of the House be increased by any law taking effect during the session at which such alteration is made.

SEC. 5. The House of Representatives shall have the sole power of impeaching: three-fourths of all the members must concur in an impeachment. The Governor and all civil officers under these articles of compact, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit under this compact; but the party convicted may be dealt with according to law.

SEC. 6. The House of Representatives shall have power to lay out the Territory into suitable districts, and apportion the representation in their own body. They shall have power to pass laws for raising a revenue either by the levying and collecting of taxes, or the imposing license on merchandise, ferries, or other objects—to open roads and canals, either by the levying a road tax, or the chartering of companies; to regulate the intercourse of the people with the Indian tribes; to establish post-offices and post-roads; to declare war, suppress insurrection, or repel invasion; to provide for the organizing, arming, and disciplining the militia, and for calling forth the militia to execute the laws of Oregon; to pass laws to regulate the introduction, manufacture, or sale of ardent spirits; to regulate the currency and internal police of the country; to create inferior tribunals and inferior officers necessary, and not provided for by these articles of compact; and generally to pass such laws to promote the general welfare of the people of Oregon, not contrary to the spirit of this instrument, and all powers not hereby expressly delegated, remain with the people. The House of Representatives shall convene annually on the first Tuesday in December, at such place as may be provided by law, and shall, upon their first meeting after the adoption of this instrument of compact, proceed to elect and define the duties of a Secretary, Recorder, Treasurer, Auditor, Marshal, or other officers necessary to carry into effect the provisions of this compact.

SEC. 7. The executive power shall be invested in one person, elected by the qualified voters at the annual election, who shall have power to fill vacancies, to remit fines and forfeitures, to grant pardons and reprieves for offences against the laws of the Territory, to call out the military force of the Territory to repel invasion or suppress insurrection, to take care that the laws are faithfully executed, and to recommend such laws as he may consider necessary to the representatives of the people for their action. Every bill which shall have been passed by the House of Representatives, shall, before it becomes a law, be presented to the Governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the House, and the House shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill; if, after such reconsideration, a majority of two-thirds of the House shall agree to pass the same, it shall become a law. In such cases the vote shall be taken by ayes and noes, and be entered upon the journals. If any bill shall not be returned by the Governor to the House of Representatives within three days (Sunday excepted) after it shall have been presented to him, the same shall become a law in like manner as if the Governor had signed it, unless the House of Representatives, by its adjournment, shall prevent its return, in which case it shall not become a law. The Governor shall continue in office two years, and until his successor is duly elected and qualified; and in case of the office becoming vacant by death, resignation, or otherwise, the Secretary shall exercise the duties of the office until the vacancy shall be filled by election. The Governor shall receive the sum of dollars per annum, as full compensation for his services, which sum may be increased or diminished at any time by law, provided the salary of no Governor shall be altered during his term of service. The Governor shall have power to convene the Legislature on extraordinary occasions.

SEC. 8. The judicial power shall be vested in a Supreme Court, and such inferior Courts of law, equity, and arbitration as may, by law, from time to time be established. The Supreme Court shall consist of one Judge, who shall be elected by the House of Representatives, and hold his office for four years, and until his successor is duly elected and qualified. The Supreme Court, except in cases otherwise directed by this compact, shall have appellate jurisdiction only, which shall be co-extensive with this Territory, and shall hold two sessions annually, beginning on the first Mondays in June and September, and at such places as by law directed. The Supreme Court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs, and hear and determine the same. The Supreme Court shall have power to decide upon and annul any laws contrary to the provisions of these articles of compact, and whenever called upon by the House of Representatives, the supreme Judge shall give his opinion touching the validity of any pending measure. The House of Representatives may, hereafter, provide by law for the Supreme Court having original jurisdiction in criminal cases.

SEC. 9. All officers under this compact shall take an oath as follows, to wit: I do solemnly swear, that I will support the Organic Laws of the Provisional Government of Oregon, so far as said Organic Laws are consistent with my duties as a citizen of the United States, or a subject of Great Britain, and faithfully demean myself in office. So help me God.

SEC. 10. Every free male descendant of a white man, inhabitant of this Territory, of the age of twenty-one years and upwards, who shall have been an inhabitant of this Territory at the time of its organization, shall be entitled to vote at the election of officers, civil and military, and be eligible to any office in the Territory, provided, that all persons of the description entitled to vote by the provisions of this section, who shall emigrate to this Territory after organization, shall be entitled to the rights of citizens after having resided six months in the Territory.

SEC. 11. The election for all civil officers, provided for by this compact, shall be held the first Monday in June annually.

ARTICLE III.

LAND LAW.

SECTION 1. Any person now holding, or hereafter wishing to establish a claim to land in this Territory, shall designate the extent of his claim by natural boundaries, or by marks at the corners and upon the lines of such claim, and have the extent and boundaries of said claim recorded in the office of the Territorial Recorder, in a book to be kept by him for that purpose, within twenty days from the time of making said claim, provided that those who shall be already in possession of land, shall be allowed twelve months from the passage of this act to file a description of his claim in the Recorder's office; and, provided further, that the said claimant shall state in his record, the size, shape, and locality of such claim, and give the names of the adjoining claimants, and the Recorder may require the applicant for such record to be made to answer, on his oath, touching the facts.

SEC. 2. All claimants shall, within six months from the time of recording their claims, make permanent improvements upon the same by building or inclosing, and also become an occupant upon said claim within one year from the date of such record, or in case not occupied, the person holding said claim shall pay into the treasury the sum of five dollars annually, and in case of failure to occupy, or on failure of payment of the sum above stated, the claim shall be considered as abandoned, provided, that no non-resident of this Territory shall have the benefit of this law, and, provided further, that any resident of this Territory, absent on his private business for two years, may hold his claim by paying five dollars annually to the treasury.

SEC. 3. No individual shall be allowed to hold a claim of more than one square mile, or six hundred and forty acres, in a square or oblong form, according to the natural situation of the premises.

Nor shall any individual be allowed to hold more than one claim at the same time. Any person complying with the provisions of these ordinances, shall be entitled to the same recourse against trespass as in other cases by law provided.

SEC. 4. Partnerships of two or more persons shall be allowed to take up a tract of land not exceeding six hundred and forty acres to each person in said partnership, subject to all the provisions of the law; and whenever such partnership is dissolved, the members shall each record the particular parts of said tract as may be allotted to him, provided that no member of said partnership shall hold a separate claim at the time of the existence of said partnership.

SEC. 5. The boundary lines of all claims shall hereafter conform, as near as may be, to the cardinal points.

SEC. 6. The officers elected at the general election, held on the first Tuesday in June, 1845, shall be the officers to act under this Organic Law, and their official acts, so far as they are in accordance with this compact, are hereby declared valid and legal.

SEC. 7. Amendments to this instrument may be proposed by the House of Representatives, two-thirds of the members concurring therein, which amendments shall be made public in all parts of Oregon, and be read at the polls at the next succeeding general election, and a concurrence of two-thirds of all the members elected at said election, may pass said amendments, and they shall become a part of this compact.

CERTIFICATE.

I, John E. Long, Secretary of Oregon Territory, do hereby certify, that the foregoing is a true and correct copy of the original law as passed by the representatives of the people of Oregon, on the fifth day of July, A. D. 1845, and submitted to the people on the twenty-sixth day of the same month, and by them adopted and now on file in my office.

J. E. LONG, *Secretary.*

TREATY WITH GREAT BRITAIN

OF LIMITS WESTWARD OF THE ROCKY MOUNTAINS.

CONCLUDED JUNE 15TH, 1846.

By the President of the United States of America,

A PROCLAMATION.

Whereas, A Treaty between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, was concluded and signed by their Plenipotentiaries at Washington, on the fifteenth day of June last, which Treaty is, word for word, as follows :—

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries, that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the northwest coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the right mutually asserted by the two parties over the said territory, have respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement; that is to say: The President of the United States of America has, on his part, furnished with full powers James Buchanan, Secretary of State of the United States, and Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Richard Pakenham, a member of Her Majesty's most honorable privy council, and her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States; who, after having communicated unto each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles :—

ARTICLE I.

From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty, shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the Continent from Vancouver's Island, and thence southerly, through the middle of the said channel, and of Fuca's Straits to the Pacific ocean: *Provided, however*, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood, that nothing in this article shall be construed as preventing, or intended to prevent, the Government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present Treaty.

ARTICLE III.

In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this Treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia River, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required shall be transferred to the said Government, at a proper valuation, to be agreed upon between the parties.

ARTICLE V.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington, the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-six.

JAMES BUCHANAN, [L. S.]
RICHARD PAKENHAM, [L. S.]

And whereas, the said Treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at London, on the seventeenth ultimo, by Louis McLane, Envoy Extraordinary and Minister Plenipotentiary of the United States, and Viscount Palmerston, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs, on the part of their respective Governments,—

Now, therefore, be it known, that I, JAMES K. POLK, President of the United States of America, have caused the said Treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifth day of August, in the year of our Lord one thousand eight hundred and [SEAL.] forty-six, and of the Independence of the United States, the seventy-first.

JAMES K. POLK.

By the President:

JAMES BUCHANAN, *Secretary of State.*

AN ACT

TO ESTABLISH THE TERRITORIAL GOVERNMENT OF OREGON.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that part of the Territory of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude, known as the Territory of Oregon, shall be organized into and constitute a temporary government by the name of the Territory of Oregon: *Provided,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to affect the authority of the Government of the United States, to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the Government to make if this act had never passed: *And provided also,* That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong: *And provided further,* That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

SECTION 2. *And be it further enacted,* That the executive power and authority, in and over said Territory of Oregon, shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of Superintendent of Indian Affairs; he may grant pardons and respites for offences against the laws of said Territory, and reprieves for offences against the laws of the

United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July, in each year, to the President of the United States, and two copies of the laws to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or absence of the Governor of the Territory, the Secretary shall be, and he is hereby, authorized and required, to execute and perform all the powers and duties of the Governor, during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said Territory, shall be vested in a Legislative Assembly. The Legislative Assembly shall consist of a Council and a House of Representatives. The Council shall consist of nine members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the members of Council of the first class, shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; and of the third class, at the expiration of the third year, so that one third may be chosen every year; and if vacancies happen by resignation or otherwise, the same shall be filled at the next ensuing election. The House of Representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the Council and of the House of Representatives, shall reside in and be inhabitants of the district, or county, or counties, for which they may be elected respectively. Previous to the first election, the Governor shall cause a census, or an enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken, by such persons and in such mode as the Governor shall designate and appoint; and the persons so appointed, shall receive a reasonable compensation therefor; and the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election, and the returns thereof, as the Governor shall appoint and direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives, to which each of the counties or districts shall be entitled under this act; and the Governor shall, by his proclamation, give at least sixty days' previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said Council districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of said House: *Provided*, That, in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly, shall meet at such place and on such day, within ninety days after such elections, as the Governor shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not be prolonged beyond one hundred days.

SEC. 5. *And be it further enacted*, That every white male inhabitant, above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office, shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the Constitution of the United States, and the *provisions of this act: And provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said Territory, by reason of being on service therein, unless said Territory is and has been for the period of six months his permanent domicil: *Provided further*, That no person belonging to the army or navy of the United States, shall ever be elected to, or hold any civil office or appointment in said Territory.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory, shall extend to all rightful subjects of legislation not inconsistent with the Constitution and Laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents, be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly, shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect: *Provided*, That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the Territory, or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange or obligations, or granting any other banking powers or privileges, shall be passed by the Legislative Assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said Territory; nor shall said Legislative Assembly authorize the issue of any obligation, scrip, or evidence of debt by said Territory, in any mode or manner whatever, except certificates for services to said Territory: and all such laws, or any law or laws, inconsistent with the provisions of this act, shall be utterly null and void; and all taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the Legislative Assembly of the Territory of Oregon.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

SEC. 9. *And be it further enacted*, That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts, by one of the Justices of the Supreme Court, at such times and places as may be prescribed by law; and the said Judges shall, after their appointments, respectively, reside in the districts which shall be assigned to them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the Probate Courts and of Justices of the Peace, shall be as limited by law: *Provided*, That Justices of the Peace shall not have jurisdiction of any case in which the title to land shall in any wise come in question, or where the debt or damages claimed, shall exceed one hundred dollars; and the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court or the Judge thereof, shall appoint its clerk, who shall also be the Register in Chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the Justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner, and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases where the Constitution of the United States, or acts of Congress, or a treaty of the United States, is brought in question; and each of the said District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution of the United States, and the laws of said Territory, as is vested in the Circuit and District Courts of the United States; writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars; and each of said District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States, and also of all cases arising under the laws of the said Territory, and otherwise. The said clerk shall receive, in all such cases, the same fees which the clerks of the District Courts of the late Wisconsin Territory received for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an Attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as were provided by law for the Attorney of the United States for the late Territory of Wisconsin. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as were provided by law for the Marshal of the District Court of the United States for the present [late] Territory of Wisconsin; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before the District Judge, or some Justice of the Peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said Secretary among the executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation, before the said Governor or Secretary, or some Judge or Justice of the Peace of the

Territory, who may be duly commissioned and qualified; which said oath or affirmation shall be certified and transmitted by the person taking the same, to the Secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and fifteen hundred dollars as Superintendent of Indian Affairs. The Chief Justice and Associate Justices shall each receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of fifteen hundred dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually travelled route. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for each House; and the chief clerk shall receive five dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the Legislature annually, unless, on an extraordinary occasion, the Governor shall think proper to call the Legislature together. There shall be appropriated annually the sum of fifteen hundred dollars, to be expended by the Governor to defray the contingent expenses of the Territory, including the salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall semi-annually account to the said Secretary for the manner in which the aforesaid [sum] moneys shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Sec. 12. *And be it further enacted*, That the rivers and streams of water in said Territory of Oregon in which salmon are found, or to which they resort, shall not be obstructed by dams or otherwise, unless such dams or obstructions are so constructed as to allow salmon to pass freely up and down such rivers and streams.

* * *

SEC. 13. *And be it further enacted*, That the sum of ten thousand dollars be, and is hereby appropriated, to be expended under the direction of the President of the United States, in payment for the services and expenses of such persons as have been engaged by the Provisional Government of Oregon in conveying communications to and from the United States, and the purchase of presents for such of the Indian tribes as the peace and quietude of the country requires.

SEC. 14. *And be it further enacted*, That the inhabitants of said Territory shall be entitled to enjoy all and singular, the rights, privileges, and advantages granted and secured to the people of the Territory of the United States northwest of the river Ohio, by the articles of compact contained in the ordinance for the government of said Territory, on the thirteenth day of July, seventeen hundred and eighty-seven; and shall be subject to all the conditions, and restrictions, and prohibitions in said articles of compact imposed upon the people of said Territory; and the existing laws now in force in the Territory of Oregon, under the authority of the Provisional Government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not incompatible with the Constitution of the United States, and the principles and provisions of this act; subject, nevertheless, to be altered, modified, or repealed, by the Legislative Assembly of the said Territory of Oregon; but all laws heretofore passed in said Territory making grants of land, or otherwise affecting or incumbering the title to lands, shall be, and are hereby declared to be null and void; and the laws of the United States are hereby extended over, and declared to be in force in said Territory, so far as the same, or any provision thereof, may be applicable.

SEC. 15. *And be it further enacted*, That the Legislative Assembly of the Territory of Oregon shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by said Legislative Assembly. And the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Oregon, to be there applied by the Governor, to the erection of suitable buildings at the seat of government.

SEC. 16. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other Territories of the United

States to the said House of Representatives; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; of which, and the time, place, and manner of holding such elections, he shall give at least sixty days' notice by proclamation; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said Territory shall not be entitled to receive more than twenty-five hundred dollars at any one session of Congress, as a compensation for his mileage, in going to and returning from the seat of government of the United States, any act of Congress to the contrary notwithstanding.

SEC. 17. *And be it further enacted*, That all suits, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations, which shall be pending and undetermined in the courts established by authority of the Provisional Government of Oregon, within the limits of said Territory, when this act shall take effect, shall be transferred to be heard, tried, prosecuted, and determined in the District Courts hereby established, which may include the counties or districts where any such proceeding may be pending. All bonds, recognizances, and obligations of every kind whatsoever, valid under the existing laws within the limits of said Territory, shall be valid under this act; and all crimes and misdemeanors against the laws in force within said limits may be prosecuted, tried, and punished in the courts established by this act; and all penalties, forfeitures, actions, and causes of action, may be recovered under this act, in like manner as they would have been under the laws in force within the limits composing said Territory at the time this act shall go into operation: *Provided*, That the laws, penalties, and forfeitures, and punishments by this section required to be enforced by the courts provided for by this act, shall not be inconsistent with the Constitution of the United States: *And provided further*, That no right of action whatever shall accrue against any person for any act done in pursuance of any law heretofore passed by the temporary government, and which may be declared contrary to the Constitution of the United States.

SEC. 18. *And be it further enacted*, That all Justices of the Peace, Constables, Sheriffs, and all other judicial and ministerial officers, who shall be in office within the limits of said Territory when this act shall take effect, shall be, and they are hereby, authorized and required to continue to exercise and perform the duties of their respective offices as officers of the Territory of Oregon, until they or others shall be duly elected or appointed, and qualified to fill their places in the manner herein directed, or until their offices shall be abolished.

* * *

SEC. 19. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be expended, by and under the direction of the said Governor of the Territory of Oregon, in the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations as shall be prescribed by law.

SEC. 20. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 21. *And be it further enacted*, That, until otherwise provided for by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the Judges who may be appointed for said Territory, to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the Judges, and alter the time and places of holding the courts, as to them shall seem proper and convenient.

SEC. 22. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Oregon, who by virtue of the provisions of any law now existing, or which may be enacted during the present Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and place, and in such manner, as the Secretary of the Treasury may prescribe.

SEC. 23. *And be it further enacted*, That all the ports, harbors, shores, and waters of the main land of the Territory aforesaid, shall constitute a collection district, to be called the District of Oregon; and a port of entry shall be established at Astoria, near the mouth of the Columbia River, and a collector of customs shall be appointed by the President, by and with the advice and consent of the Senate, to reside at such port of entry.

SEC. 24. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to establish such ports of delivery in the district created by this act, not exceeding two in number (one of which shall be located on *Puget's* Sound), as he may deem expedient, and may appoint, by and with the advice and consent of the Senate, surveyors to reside thereat.

SEC. 25. *And be it further enacted*, That the Collector of said district shall be allowed a compensation of one thousand dollars per annum, and the fees allowed by law; and the compensation of any surveyor appointed in pursuance of this act, shall not exceed five hundred dollars per annum, including in said sum the fees allowed by law; and the amount collected by any of said surveyors, for fees in any one year, exceeding the sum of five hundred dollars, shall be accounted for and paid into the Treasury of the United States.

SEC. 26. *And be it further enacted*, That the revenue laws of the United States be, and are hereby, extended over the Territory of Oregon.

SEC. 27. *And be it further enacted*, That the sum of fifteen thousand dollars be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be expended under the direction of the Secretary of the Treasury, for the construction of light-houses at Cape Disappointment and New Dunginess; and for the construction and anchoring of the requisite number of buoys, to indicate the channels at the mouth of the Columbia River, and the approaches to the harbor of Astoria; the said buoys to be placed and anchored under the direction of such persons as the Secretary of the Treasury shall appoint.

APPROVED, *August* 14, 1848.

ACT OF CONGRESS

CREATING THE OFFICE OF SURVEYOR-GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO SETTLERS OF THE SAID PUBLIC LANDS.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Surveyor-General shall be appointed for the Territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the Territory of Oregon, as are vested in and required of the Surveyor of lands in the United States northwest of the Ohio, except as hereinafter provided.

SECTION 2. *And be it further enacted*, That the said Surveyor-General shall establish his office at such place, within the said Territory, as the President of the United States may from time to time direct; he shall be allowed an annual salary of two thousand five hundred dollars, to be paid quarter-yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is, appropriated the sum of four thousand dollars, or as much thereof as is necessary for clerk hire in his office; and the further sum of one thousand dollars per annum for office rent, fuel, books, stationery, and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands.

SEC. 3. *And be it further enacted*, That if, in the opinion of the Secretary of the Interior, it be preferable, the surveys in said Territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms, as may be provided by the Secretary of the Interior, or other Department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as Congress may from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said Surveyor to cause a base line, and meridian to be surveyed, marked, and established, in the usual manner, at or near the mouth of the Wallamet River; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States, which may be in force, the district of country lying between the summit of the Cascade Mountains and the Pacific Ocean, and south and north of the Columbia River: *Provided, however*, That none other than township lines shall be run, where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile, for every mile and part of mile actually surveyed and marked.

SEC. 4. *And be it further enacted*, That there shall be, and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one, now residing in said Territory, or who shall become a resident thereof, on or before the first day of December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one half section, or three hundred and twenty-acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres, one half to himself and the other half to his wife, to be held by her in her own right; and the Surveyor-General shall designate the part enuring to the husband and that to the wife, and enter the same on the records of his office; and in all cases where such married persons have complied with the provisions of this act, so as to entitle them to the grant as above provided, whether under the late Provisional Government of Oregon, or since, and either shall have died before patent issues, the survivor and children, or heirs of the deceased shall be entitled to the share or interest of the deceased, in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon: *Provided*, That no alien shall be entitled to a patent to land, granted by this act, until he shall produce to the Surveyor-General of Oregon, record evidence that his naturalization as a citizen of the United States has been completed; but if any alien, having made his declaration of an intention to become a citizen of the United States, after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: *Provided further*, That in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: *Provided further*, That all future contracts, by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act, before he or they have received a patent therefor, shall be void: *Provided further, however*, That this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain, relative to the Oregon Territory, to claim both under this grant and the treaty, but merely to secure them the election, and confine them to a single grant of land.

SEC. 5. *And be it further enacted*, That to all white male citizens of the United States, or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to and settling in said Territory, between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; and to all white male American citizens, not hereinbefore provided for, becoming one and twenty years of age, in said Territory, and settling there between the times last aforesaid, who shall in other respects comply with the foregoing section and the provisions of this law, there shall be, and hereby is, granted the quantity of one quarter section, or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year from the time of arriving in said Territory, or within one year after becoming twenty-one years of age as aforesaid, then the quantity of one-half section, or three hundred and twenty acres, one-half to the husband, and the other half to the wife in her own right, to be designated by the Surveyor-General as aforesaid: *Provided always*, That no person shall ever receive a patent for more than one donation of land in said Territory in his or her own right: *Provided*, That no mineral lands shall be located or granted under the provisions of this act.

SEC. 6. *And be it further enacted*, That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then within three months from the commencement of such settlement, each of said settlers shall notify the Surveyor-General, to be appointed under this act, of the precise tract or tracts claimed by them respectively, under this law, and in all cases it shall be in a compact form; and where it is practicable so to do, the land so claimed shall be taken as nearly as practicable, by legal subdivisions; but where that cannot be done, it shall be the duty of the said Surveyor-General to survey and mark each claim, with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in such case, not to exceed the price paid for surveying the public lands. The Surveyor-General shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily, on the township plats, the tract or tracts so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the Surveyor-General: *Provided*, That after the first December next, all claims shall be bounded by lines running east and west, and north and south: *And provided further*, That after the survey is made, all claims shall be made in conformity to the same, and in compact form.

SEC. 7. *And be it further enacted*, That within twelve months after the surveys have been made, or where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act, shall prove to the satisfaction of the Surveyor-General, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by this act had been commenced, specifying the time of the commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late Provisional Government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the Surveyor-General, or other officer appointed by law for that purpose, shall issue certificates, under such rules and regulations as may be prescribed by the Commissioner of the General Land Office, setting forth the facts in the case, and specifying the land to which the parties are entitled. And the said Surveyor-General shall return the proof so taken, to the office of the Commissioner of the General Land Office, and if the said Commissioner shall find no valid objection thereto, patents shall issue for the land, according to the certificates aforesaid, upon the surrender thereof.

SEC. 8. *And be it further enacted*, That upon the death of any settler before the expiration of the four years' continued possession required by this act, all the rights of the deceased under this act, shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent.

SEC. 9. *And be it further enacted*, That no claim to a donation right under the provisions of this act, upon sections sixteen or thirty-six, shall be valid or allowed, if the residence and cultivation upon which the same is founded, shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for governmental purposes, unless the residence or cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

SEC. 10. *And be it further enacted*, That there be, and hereby is, granted to the Territory of Oregon, the quantity of two townships of land in said Territory, west of the Cascade Mountains, and to be selected in legal subdivisions after the same has been surveyed, by the Legislative Assembly of said Territory, in such manner as it may deem proper, one to be located north, and the other south of the Columbia River, to aid in the establishment of a university in the Territory of Oregon, in such manner as the said Legislative Assembly may direct, the selection to be approved by the Surveyor-General.

SEC. 11. *And be it further enacted*, That what is known as the "Oregon City Claim," excepting the Abernethy Island, which is hereby confirmed to the legal assigns of the Wallamet Milling and Trading Companies, shall be set apart and be at the disposal of the Legislative Assembly, the proceeds thereof to be applied by said Legislative Assembly, to the establishment and endowment of a university, to be located at such place in the Territory as the Legislative Assembly may designate: *Provided, however*, That all lots and parts of lots in said claim, sold or granted by Doctor John McLaughlin, previous to the fourth of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the Commissioner of the General Land Office, by the Surveyor-General, and patents to issue on said certificates, as in other cases: *Provided further*, That nothing in this act contained, shall be so construed and executed, as in any way to destroy or affect any rights to land in said Territory, holden or claimed under the provisions of the treaty or treaties, existing between this country and Great Britain.

SEC. 12. *And be it further enacted*, That all persons claiming land under any of the provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the Surveyor-General, who is hereby authorized to administer all such oaths or affirmations, or before some other competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting directly or indirectly, as agent for, or in the employment of others, in making such claims; and that they have made no sale, or transfer, or any arrangement or agreement, for any sale, transfer or alienation of the same, or by which the said land shall enure to the benefit of any other person. And all affidavits required by this act, shall be entered of record, by the Surveyor-General, in a book to be kept by him for that purpose: and on proof, before a court of competent jurisdiction, that any of such oaths or affirmations are false or fraudulent, the persons making such false or fraudulent oaths, or affirmations, shall be subject to all the pains and penalties of perjury.

SEC. 13. *And be it further enacted*, That all questions arising under this act, shall be adjudged by the Surveyor-General as preliminary to a final decision according to law; and it shall be the duty of the Surveyor-General, under the direction of the Commissioner of the General Land Office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts, and things necessary and proper to carry out the provisions of this act.

SEC. 14. *And be it further enacted*, That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the President of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act: *Provided*, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation, the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the Secretary of War, to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

APPROVED, *September*, 27, 1850.

JOHN P. GAINES,

GOVERNOR OF OREGON TERRITORY.

EDWARD HAMILTON,

SECRETARY OF THE TERRITORY.

AMORY HOLBROOK,

DISTRICT ATTORNEY.

JOSEPH D. MEEK,

MARSHAL.

JUSTICES OF THE SUPREME COURT.

THOMAS NELSON, *Chief Justice*,

O. C. PRATT, WM. STRONG.

Session of 1849–50.

SAMUEL PARKER,

PRESIDENT OF THE COUNCIL.

A. L. LOVEJOY,

SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Session of 1850–51.

WILLIAM W. BUCK,

PRESIDENT OF THE COUNCIL.

RALPH WILCOX,

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GENERAL LAWS.

ARBITRATIONS.

An Act, *authorizing and regulating Arbitrations.*

Sec.
1. What controversies may be submitted to arbitration, and made a rule of Court.
2. What shall be set forth in the arbitration bonds.
3. Same subject.
4 Subpœnas may issue for witnesses.
5. Persons disobeying such process are guilty of contempt, and may be punished as in other cases
6 Arbitraters, umpire, and witnesses shall be sworn.

Sec.
7. Award, how made out and published.
8. How award may be enforced.
9. Same subject.
10. Same subject.
11. For what causes award may be set aside.
12. What proof required before award can be enforced.
13. Fees of arbitrators, &c., shall be inserted in award.
14 When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon:* That all persons who shall have any controversy or controversies, except when the possession or title of real estate may come in question, may submit such controversy or controversies to the arbitration or umpirage of any person or persons to be mutually agreed upon by the parties: and they may make such submission a rule of any Court of Record in this Territory.

Sec. 2. That the parties to such submission may enter into arbitration bonds: which bonds shall be conditioned for the faithful performance of the award or umpirage, setting forth the name or names of the arbitrators or umpires, and the matter or matters submitted to his or their determination: and when such is the agreement, that such submission be made a rule of any Court of Record within this Territory, or a rule of any particular Court of Record named in the submission.

Sec. 3. That said arbitration bonds shall specify some certain time and place, at which said arbitration shall be held, allowing said arbitrators or umpires liberty to adjourn from time to time, until an award or umpirage be made, some time certain being specified in said bond, at which said award or umpirage be made up.

Sec. 4. That the parties shall have the benefit of legal process, to compel the attendance of witnesses, which process shall be issued by the clerk of the District Court, or any Justice of the Peace for any county in which such arbitration shall be held, and shall be returnable before the umpire or arbitrators, on a day and place certain, named therein.

SEC. 5. That any person disobeying such process, after being duly served therewith, shall be deemed guilty of contempt of the court from which such process issued: and on complaint made by the party injured, to the District Court, whose clerk issued such process, or to the Justice, as the case may be, such Court or Justice may subject the person disobeying such process to the same penalties and forfeitures, and in the same manner as such Court or Justice is authorized to inflict upon persons disobeying writs of subpœna in other cases.

SEC. 6. That the umpire or arbitrators shall act under oath or affirmation, to be administered by any person authorized to administer oaths in the proper county, and said umpire or arbitrators are hereby authorized to swear or affirm all witnesses for either party to such arbitration.

SEC. 7. That the award of the umpire or the arbitrators, or a majority of them, shall be drawn up in writing, and signed by such umpire or arbitrators named in the submission, or a majority of them: and a true copy of said award or umpirage shall, without delay, be delivered by the umpire or arbitrators to each of the parties in interest.

SEC. 8. That if either of the parties shall refuse or neglect to comply with said award or umpirage, the other party may file the same, together with the submission or arbitration bond, in the court named in the submission, or if no particular court be named therein, then in the District Court in the county where said arbitration is held.

SEC. 9. That such court, at the next term thereof, after filing the same as aforesaid, if no legal exceptions be made or taken to said award or other proceedings, and said award is for the payment of money, shall enter up judgment thereon, as on a verdict of a jury between the parties, and issue execution thereon, as in other cases, immediately after the amount specified in said award is due and payable.

SEC. 10. That so far as said award or umpirage directs the performance of any act or thing, other than the payment of money, the party disobeying the same shall be liable to be punished as for a contempt of court, either by attachment, sequestration, or execution, as the nature of the case may require.

SEC. 11. That if any legal defects appear in the award or other proceedings, or if it shall be made to appear at the term of the court to which said award and arbitration bond are entered in said court, on oath or affirmation, that said award or umpirage was obtained by fraud, corruption, or other undue means, or that said arbitrators or umpire misbehaved, said court may set aside such award or umpirage, or make such order thereon as may be just and right.

SEC. 12. That in all cases the party enforcing any award, shall produce satisfactory proof to the court of the due execution of the submission or arbitration bond: and that the party refusing or neglecting to obey the award or umpirage, hath been furnished with a true copy thereof, at least ten days before the term at which the application to enforce such award is made.

SEC. 13. That each person chosen and performing the duties of an arbitrator or umpire under this act, shall be entitled to receive two dollars per day for his services, and every witness, for his attendance, and Justice, Judge, or clerk, for administering oaths or affirmations, the same fees as in other cases: which fees shall be taxed by the arbitrators, and inserted in their award or umpirage.

SEC. 14. This act to take effect, and be in force, from and after the first day of June next.

Passed the House of Representatives January 15th, 1851.
Passed the Council January 21st, 1851.

ATTACHMENT.

AN ACT, *allowing and regulating Writs of Attachment.*

(177)

SEC.
1. In what cases the writ to issue—the affidavit—the writ. When security for costs required.
2. How writ executed and returned. At what period property bound. Lien of consignee protected.
3. Notice, how made and published. Effect of not publishing notice.
4. Garnishee to give bond, or property to remain with Sheriff. Condition of bond. Value of lost property remitted.
5, 6. Proceedings against garnishee.
7. When property attached is claimed by another, how trial thereof shall be had. Verdict and judgment. Appeal allowed in such cases.
8. When appeal in such case is had, what shall be done with the property. Declaration on such appeal.

SEC.
9. Proceedings in Court on the attachment. Cases under the act limited to those sounding in contract. If plaintiff in attachment fails, other creditors may proceed.
10. Proceedings in Court against the garnishee.
11. When and how property sold and how proceeds applied Perishable property may be ordered to be sold.
12. When writ may be issued to another County, and the proceedings thereon.
13. Where two or more are jointly bound, how to proceed.
14. Action not to abate by death of defendant.
15. Proceedings before Justice superseded by attachment in District Court. Proceedings in such cases.
16. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon:* That if any creditor, whether a resident of the Territory of Oregon or elsewhere, his agent or attorney, shall make oath or affirmation in writing before any proper authority, that his debtor hath absconded, to the injury of his creditors, or that such debtor is not a resident of the Territory, as he verily believes, and shall file the same with the clerk of the District Court;

such clerk shall issue a writ of attachment, directed to the sheriff or coroner, as the case may require, commanding him to attach the lands, tenements, goods and chattels, rights, credits, moneys and effects, of said debtor, wherever they may be found; and if any clerk shall issue such writ without oath or affirmation, filed as aforesaid, such writ shall be quashed at his costs: *Provided*, That no writ of attachment issued under the provisions of this act, at the suit of any person who is not a citizen or a resident of the county, shall be served by the officer, unless the same shall be endorsed by some citizen of the county, as security.

SEC. 2. That the officer having such writ, shall go to the place where the defendant's property may be found, and there, in the presence of two citizens of the county, declare that, by virtue of said writ, he attaches said property at the suit of such plaintiff; and the said officer, with the said citizens, who shall be under oath or affirmation, to be by him administered (and who shall, for their services, be allowed such sum as the court may direct), shall make a true inventory and appraisement of all the property attached, which shall be signed by said officer and citizens; and returned with the writ, with the time when the same was served; and which, from the time of service, shall bind the property, and the estate of the defendant so attached: *Provided*, That when the property shall be attached in the hands of a consignee, his lien thereon shall not be affected thereby.

SEC. 3. That upon return of said writ, the clerk, who issued the same, shall make out an advertisement, stating the names of the parties, the time when, from what court, and for what sum the writ issued, and deliver the same to the plaintiff, or his attorney, on demand, who shall cause the same, within thirty days, to be inserted in one of the newspapers printed in this Territory, and nearest the place where the attachment issued, for six weeks successively; and if any plantiff shall neglect to have such notice published, the attachment shall be dismissed with costs.

SEC. 4. That the property attached shall remain in the hands of the officer, unless the garnishee, in whose possession it may be found, shall give bond to the officer, with two sufficient sureties, citizens of the county, in double the appraised value thereof, with condition that the same property, or its appraised value in money, shall be forthcoming to answer the judgment of the court: *Provided*, That if it shall appear to the court that any part of said property shall have been lost or destroyed, by unavoidable accident, they shall remit the value thereof to the person so bound.

SEC. 5. That if the plaintiff, or other credible person, shall make oath that he has good reason to, and does verily believe, that any person (naming him) has property (describing the same) in his possession belonging to the defendant, and if the officer cannot come at such property, he shall leave with such garnishee, or at his usual place of residence, a copy of the writ of attachment and affidavit, with a written notice that he appear in court at the return of such writ; and the said garnishee shall attend accordingly, and answer under oath or affirmation all questions put to him, touching the property and credits of the defendant in his possession, or within his knowledge, and from the day of such service, such shall stand liable to the plaintiff in attachment to the amount of the property, moneys, and credits in his hands, or due from him, to the said defendant; and if such garnishee do not appear in court as required, the court may proceed against him by attachment; or if the plaintiff or other credible person shall make oath or affirmation, and file the same, that he has good reason to, and does verily believe, that the said garnishee will abscond before judgment and execution can be had against him, or that any other person (naming him) hath any property, money, or credits of the defendant then in his possession, or is indebted to said defendant, and that he is in fear such other person will abscond as aforesaid, it shall be lawful for such plaintiff to institute a suit by *capias ad respondendum* against such garnishee, or other person, who shall be held to special bail; in which suit the plaintiff may declare for the property, moneys, and credits, aforesaid, as of his own proper moneys, properties, and credits, in *trover and conversion*; or if the garnishee be indebted to the defendant for *money had and received*, or if the garnishee shall have property, money, or credits of the defendant in his possession, and shall also be indebted to said defendant, the plaintiff may declare in *trover*, adding thereto a count for money had and received, and give special matter in evidence; and if verdict and judgment be had for the said plaintiff, execution shall be thereupon had as in other cases.

SEC. 6. That the suit so instituted shall be continued until the action against the defendant in attachment shall be determined, and if in such action judgment shall be rendered for the defendant, the garnishee shall recover costs, and if the plaintiff shall recover against the said defendant in attachment, and if the said garnishee shall deliver to the officer executing such writ, all the property in his possession belonging to the defendant, and pay all the money from him due at the time of service of process on such garnishee, then the costs which have accrued in such suit, against said garnishee, shall be paid out of the effects in the hands of such officer.

SEC. 7. That if the officer, by virtue of any such writ of attachment, shall attach any goods or chattels claimed by any person, other than the defendant, it shall be the duty of said officer forthwith to give notice, in writing, to some Justice of the Peace of the county, in which he shall set forth the names of the plaintiff and defendant in attachment, the name of the person claiming, and also a schedule of the property claimed, and it shall be the duty of such Justice of the Peace, immediately upon the receipt of such notice, to issue a *venire facias*, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested persons, having the qualifications of electors, who shall be named in said *venire facias*, to appear before him at a time therein mentioned, which shall not be more than three days after the date of said *venire facias*; to try and determine the right in the property so attached, and shall also give notice, by summons, to the plaintiff, his agent or attorney, if within the county, of the time and place of such trial; and if the said jury shall find the right to such property, or any part thereof, to be in the claimant, the said Justice shall render judgment in favor of said claimant for his costs, and also that he have restitution of such goods and chattels; but if the right to said property shall be found to be in the defendant in attachment, then the said Justice shall enter judgment against the claimant for costs, and award execution thereon, as in other cases: *Provided*, That an appeal shall be allowed in all such cases, in the same manner that appeals are allowed from the judgment of Justices of the Peace; except that bail for such appeal shall be entered within five days from and after the rendition of judgment: and *Provided also*, that no order for restitution shall be issued until after the expiration of said five days.

SEC. 8. That when any appeal shall be taken and perfected, as is provided in the preceding section of this act, the property so attached and claimed, shall remain in the keeping of the officer attaching the same, unless the claimant shall enter into a bond, payable to such officer, in double the appraised value thereof, with one or more sureties, to be approved of by said officer, conditioned that the same property, or the appraised value thereof in money, shall be forthcoming, to answer any judgment that may be recovered by the plaintiff, or other creditor, against the defendant in attachment; in case the right to such property, or any part thereof, shall be determined against said claimant; and the claimant before the Justice shall be plaintiff in the District Court, and shall declare in *trover*, and the special matter may be given in evidence.

SEC. 9. That at the first [and second] term after the issuing of the writ of attachment, the defendant shall be called, and his default entered, at or before which second term, the said plaintiff, and every other creditor of the defendant, may file [his or] their declaration, setting forth in a proper manner [his or] their cause of action; and it shall be competent for such defendant, at or before the said second term, to file special bail, or surrender himself into custody, or elect to have the property attached remain in custody; and may plead to any or all the declarations which may be filed against him; but that if the said defendant shall not plead as aforesaid, the court, at the said second term, shall proceed at the suit of all the said plaintiffs, as in other cases of default; and the said defendant or any other on his behalf may appear, and introduce evidence before the court or jury, as in other cases of default; and shall have the same right to appeal, move in arrest of judgment, or to set aside the proceedings for irregularity; and if the defendant shall enter special bail, or surrender himself into custody as aforesaid, the operation of such attachment upon the property and moneys of said defendant, shall cease in respect of the plaintiffs, whose declarations may have been pleaded to, in custody, or by reason of having filed special bail: *Provided*, That no judgment shall be rendered under the provisions of this act; excepting for causes arising out of, founded upon, or sounding in contract, or upon the judgment or decree of some court of law or chancery: and *Provided further*, That in case judgment shall be rendered against the original plaintiff in attachment; or if he shall otherwise fail to prosecute his suit to effect, the proceedings in favor of such other creditors as may have filed declarations, shall in nowise be affected thereby, but may be prosecuted to final judgment, and the property attached shall remain in the hands of the officer to satisfy the same.

SEC. 10. That when judgment shall be entered against a defendant in attachment, a *scire facias* shall issue against the garnishee, except as hereinbefore provided for, to appear at the next term, and show cause why the plaintiff should not have execution of the money due by him to the defendant, or of the goods and chattels of the defendant in the possession of the garnishee; and if the garnishee shall appear upon return of the said *scire facias*, and on oath or otherwise to the satisfaction of the plaintiff, confess the amount of such debt, or the value of such goods and chattels, and deliver the same to the officer serving the attachment, or shall pay the value thereof, with all moneys from him owing to the said defendant into court, he shall be discharged from all further liability on account of the goods so delivered and the money so paid; and the costs thereof shall be paid out of the effects so attached; that if on said *scire facias* returned "served," or on two writs returned "nihil," the said garnishee shall not appear and confess, as is hereinbefore provided, judgment shall be entered against him by default, and the court shall proceed to assess the amount thereof, and award execution therefor, as in other cases; that if the said garnishee shall appear at the return of said writ or writs, and plead thereto, the issue shall be tried, and the damages assessed by a jury, as in other cases, and judgment shall be entered for the plaintiff in attachment, and for the value of the goods belonging to said defendant, in his possession at the time of serving said writ, with costs; and shall award execution therefor; but if the said jury find in favor of said garnishee, he shall recover costs and have execution for the same.

SEC. 11. That after judgment for the plaintiff in attachment, all the property remaining in the hands of the officer, with the lands and tenements, if any, whether held by [legal] or equitable title, shall be sold by order of the court under the same restrictions and regulations as if the same had been levied upon by execution, and the money arising therefrom, with the amount which may be recovered from the said garnishee, after discharging the costs, shall be divided among the several creditors in proportion to the amount of their respective judgments; and if there be not sufficient to satisfy the whole, the said judgments so recovered shall stand, and execution may issue thereon for the residue, in all respects as in other cases: *Provided*, That animals, and property of a perishable nature, may be sold by order of the court, at any time after the return of the writ.

Sec. 12. That in all cases of attachment by virtue of this act, if the plaintiff, his agent or attorney, shall make and file with the clerk an affidavit, setting forth that he verily believes that the defendant in attachment hath lands, tenements, and real estate, goods or chattels, situated in any other county (naming such county) in the Territory, the clerk shall, on application of the plaintiff, or his attorney, make out and seal another writ of attachment directed to the sheriff or coroner of the county in which such other property shall be, who shall serve and return the same in the same manner, and for neglect shall be liable to the same penalty, as if such writ had issued, and was returnable in his own county: and on such writ executed there shall be the same proceedings as are hereinbefore described.

Sec. 13. That when two or more are jointly bound or interested, either as joint obligors, partners, or otherwise, the writ of attachment provided for by this act, may be issued against the separate, or joint estates, or both, of such joint debtors, or any of them, in the same manner and under the same restrictions as is provided for by this act in other cases.

Sec. 14. That if any defendant shall die after a writ of attachment shall have issued against him, it shall not thereby abate; but the same shall be carried on to judgment, sale, and distribution, as if such death had not happened.

Sec. 15. That any writ of attachment which may be issued out of the District Court, shall be a *supersedeas* to all attachments issued by a Justice of the Peace (except so far as herein provided), which may be undetermined at the time of serving said writ; and it shall be lawful for the officer serving the same, to take into his possession all goods and chattels taken by the constable, as if no writ of attachment had been issued by the Justice: *Provided*, That it shall be competent for every plaintiff in attachment, and such as may file their claims before the Justice of the Peace, to proceed thereon to final judgment; a transcript of which judgment shall be filed in the District Court, and the parties thereto, plaintiffs, shall be entitled to the same distribution as if judgment had been obtained in said court; and all costs accruing before said Justice shall be taxed, with the costs in court, and paid as hereinbefore directed.

Sec. 16. This act shall take effect, and be in force, from and after its passage.

Passed the Council February 4th, 1851.
Passed the House of Representatives February 5th, 1851.

BRIDGES.

AN ACT, *to provide for building Bridges.*

(748)

SEC.
1. Power of Probate Court.
2. Bridges costing over fifty dollars to be built by county
3. County to repair if it cost over fifty dollars.
4. Commissioners appointed to build and keep in repair.
5, 6. To take an oath, and not commence until appropriation be made.
7. Commissioner to estimate cost, and appropriation not to exceed it.
8. Cost when less than one hundred and fifty dollars to be certified to road district overseer.
9. Letting to be advertised.
10. To be by public outcry, and security required from contractor.
11. Cost paid out of county treasury.
12. When and how bridges may be built aided by subscriptions.

SEC.
13. Bridges over county lines how built
14. When one moiety of the expense of such bridge be raised by subscription, counties to unite and pay the residue.
15 Steps to be taken when repairs are necessary.
16. If commissioner fail to repair, another to be appointed, and notice to be given.
17 Repairs to be made by employing others, and expenses collected from contractor.
18. Commissioner prohibited from contracting or being security.
19. Compensation.
20, 21. May take rock or timber, to be paid for by allowance of Probate Court.
22. Viewers may be appointed to assess damages.

SECTION 1. Each Probate Court shall determine what bridges shall be built and maintained at the expense of the county, and what by the road district.

SEC. 2. Where the estimated expense of a bridge shall exceed fifty dollars, it shall be built by the county.

SEC. 3. The Probate Court may order any bridge built by the county to be attached to a road district, for the purpose of being kept in repair by such district, but when the repairs necessary at one time shall exceed in value fifty dollars, the same shall not be required to be done by such road district.

SEC. 4. If the Probate Court shall be of opinion that a bridge is necessary, and that it shall be built at the expense of the county, they shall determine in what manner, and of what materials the same shall be built, and shall appoint some fit person commissioner to contract for building such bridge and for keeping the same in repair not less than two, nor more than four years, to be determined by the Probate Court.

SEC. 5. Said commissioner shall take an oath faithfully to perform the duties enjoined on him by this act.

SEC. 6. The commissioner shall do nothing towards building the bridge until appropriation for the same shall first be made by the Probate Court.

SEC. 7. Unless the court from its own information shall be satisfied as to the expense of building the bridge, and shall make an appropriation accordingly, it shall be the duty of the said court to require the commissioner to proceed to the spot where the bridge is to be built, and make an accurate estimate of the cost of building the same according to any plan or plans ordered by the court, or such as in his opinion may be best, and without delay make report thereof, and the court may then, or may not, in its discretion, make an appropriation for building the bridge, which shall in no event exceed the estimate made by the commissioner.

Sec. 8. If the estimated cost of the bridge shall be less than one hundred and fifty dollars, then that fact shall be certified to the overseer of the road district in which the bridge is to be built.

Sec. 9. The commissioner shall advertise the time and place for letting the bridge out at three public places in the township (or at the Court House door), where such bridge is to be built, twenty days prior to letting the same.

Sec. 10. He shall let the same by public outcry to the person making the lowest bid, which shall in no event exceed the appropriation, and shall take bond payable to the county, with two good and sufficient householders as securities, in such penalty as he shall deem sufficient to cover all damages which may accrue from the breach of such contract.

Sec. 11. The court may order the expense of building such bridge out of any money in the county treasury.

Sec. 12. When one moiety of the estimated expense of building any bridge upon any county road shall have been raised by individual subscription, and such subscription exhibited to the Probate Court, with a petition from twenty resident householders in the county in which such bridge is intended to be built, praying the erection thereof, the court shall take such petition into consideration, and if in their opinion, all things considered, the interest of the public will be promoted by building the bridge at that time, they shall make an order for building the same, and for the payment of the residue of the estimated expense of building said bridge out of the county revenue.

Sec. 13. If a bridge be necessary over any water course which divides one county from another, the Probate Courts of both counties shall unite in appointing a commissioner for building said bridge, and the expense shall be defrayed by both counties in proportion to the amount of tax of each, to be ascertained by the tax list taken next before the contract for building such bridge shall be made.

Sec. 14. When one moiety of the estimated expense of building such bridge shall be raised by subscription, both Probate Courts, if satisfied of the expediency of so doing, shall forthwith unite to cause such bridge to be built, and shall pay the residue of the expense of the bridge in the proportion hereinbefore directed.

Sec. 15. The Probate Court shall, whenever it is necessary, without delay make an appropriation to repair any public bridge in the county, and whenever any bridge shall be repaired, the like preliminary steps shall be had as in case of building a bridge, and the commissioner shall have the same powers, and proceed in like manner, as the commissioner for building a bridge.

Sec. 16. If any public bridge require repairing, which by contract is to be kept in repair, the commissioner of such bridge, or if he be absent, or fail, or is incapable of acting, then a commissioner to be appointed by the Probate Court, shall give notice in writing to any one or more of the undertakers, or to his or their securities, stating the repairs necessary to be made, and requiring the same to be done within a reasonable time, to be set forth in such notice.

Sec. 17. If the repairs shall not be made within such time, the commissioner shall employ some other person forthwith to make the same, allowing therefor a reasonable price, and may immediately collect the amount paid with costs before any court of competent jurisdiction, by action of debt or assumpsit.

Sec. 18. No commissioner shall be an undertaker for building a bridge of which he is commissioner, nor be security for any undertaker.

Sec. 19. He shall be allowed two dollars for each day necessarily employed in the discharge of the duties of his office, to be paid out of the county treasury or treasuries.

Sec. 20. He may take, or cause to be taken from the adjoining or most convenient lands, such quantity of rock and timber as may be necessary for the building or repairing of such bridge.

Sec. 21. When timber or rock shall be taken from the lands of any individual, the Probate Court may allow compensation for the same.

Sec. 22. If any person be aggrieved by the cutting of such timber, such person may apply to the Probate Court of the proper county, who shall appoint three disinterested householders as viewers, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury or treasuries.

Passed 26th September, 1849.

CATTLE.

An Act, *to provide against dangerous and vicious Cattle.* (149)

Sec.
1. Owners of vicious cattle, suffering them to run at large, after notice, liable to a fine—fine how recovered.

Sec.
2. Killing vicious cattle, when justifiable.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person or persons, who own or are owners of dangerous and vicious cattle, which animal or animals, are known to endanger the safety of persons travelling through neighborhoods, by their dangerous and vicious dispositions, such person or persons, having twelve hours' notice of the dangerous disposition of such animal or animals, and will not keep such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners, shall be liable to a fine of not less than five dollars, nor exceeding fifty dollars, which may be recovered before any Justice of the Peace of the county, with costs of suit, for the use of the School Fund.

SEC. 2. That any person who should in defence of himself or others, kill one or more cattle, he shall not be liable to any damages for any such act done in self-defence.

Passed 3d September, 1849.

COMMON SCHOOLS.

AN ACT, *establishing a system of Common Schools.*

(180)

CHAPTER I.—*School Fund.*

SEC.
1. School Fund established.
2 Interest to be applied to support of schools.
3. Rent of school lands, and two mill tax to be added and distributed.
4. Interest at six per cent. to be raised by investment.
5. School Commissioners authorized to draw funds belonging to a county, to be disbursed by county treasurer.

CHAPTER II.—*Superintendent.*

6. Superintendent elected triennially by Assembly.
7. His duties prescribed.
8. He shall keep general account, prescribe forms, report, etc.
9. His incidental expenses and salary.

CHAPTER III.—*School Examiners.*

10. District Court to appoint Examiners.
11. Their duty.

CHAPTER IV.—*School Commissioners.*

12. One for each county to be elected triennially.
13, 14, 15. His duties defined.

CHAPTER V.—*District Directors.*

16. Three to be elected annually for one year.
17. To meet in ten days and take oath of office.
18. To elect clerk and treasurer. His duty defined.
19, 20, 21, 22. Directors a body politic Powers and duties.

CHAPTER VI.—*Teachers.*

SEC.
23. To obtain certificate, keep a register, etc.

CHAPTER VII.—*School Districts.*

24. People may form districts on notice of ten days.
25. Commissioners to lay off counties into districts—to prepare plats thereof to be laid before Board of County Commissioners to be confirmed.
26. Districts to be changed on twenty days written notice—alterations to be noted on plats.

CHAPTER VIII.—*Powers and duties of district meetings.*

27. Meetings to be held under notice to organize. To vote for purchase or erection of houses, levy money, etc.
28. All taxable property subject for the amount ordered.
29. County Auditor to furnish abstracts of property for use of Directors. Not more than twenty dollars to be raised by taxation in one year.
30. Tax apportioned between districts where land lies in more than one.
31. District treasurer to collect the tax by distress and sale of personal property, or return delinquent to Auditor.
32. Schools open to all children of four and twenty-one.
33. Directors to visit schools and aid teachers, etc.
34. Preferences shall not be made for religious opinion.
35. Districts to organize and report to be entitled to funds.
36. Discretionary power in Superintendent in visiting counties.

CHAPTER I.—*School Fund.*

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there hereby is constituted and established, a fund to be designated by the name of the Common School Fund, the income of which shall be appropriated to the support of Common Schools, in the Territory of Oregon, in such manner as shall be pointed out by law.

SEC. 2. That the principal of all moneys, falling or accruing to the Territory of Oregon, for school purposes, whether by donation or bequest, or from the sale of any land heretofore given, or which may hereafter be given by the Congress of the United States to this Territory for school purposes, or accruing from licences, fines, forfeitures or penalties, appropriated by law to Common Schools, or in any other manner whatever, shall constitute an irreducible fund; the proceeds or interest, accruing from which, shall be annually divided among all the school districts in the Territory, proportionally to the number of children or youth in each, between the ages of four and twenty-one years; for the support of Common Schools in said districts; and for no other use or purpose whatever.

SEC. 3. That all moneys accruing from the lease or rent of school lands, and also from a tax of two mills on the dollar, to be assessed and collected in the same manner as other territorial taxes, shall be added to the interest on the school funds provided for in the preceding section, to be distributed annually with said interest, and in the same manner, amongst all the school districts in the Territory.

SEC. 4. That all moneys paid into the treasury of the Territory, as provided for in the second section, shall bear an annual interest of six per centum, which interest shall be cast from the time of the payment of any principal sum, up to the first of January next succeeding such payment, and on the first day of January annually thereafter; and the Legislative Assembly shall, from time to time, make such disposition of the fund, that it shall never be diverted from its proper object, and that it may be made to yield the foregoing interest with the greatest possible degree of certainty and regularity.

SEC. 5. That for the payment of any interest that shall have accrued and be payable to the districts, as herein provided for, the School Commissioners of each county, on or before the first day of January annually, shall draw an order on the treasury of the Territory in favor of the treasurer of his proper county, for the interest or other moneys payable to such counties, and on such order being presented to the Superintendent of Common Schools, he shall certify an abstract of the amount of moneys payable to the several counties, and thereupon on presentation of the said order, the Treasurer of the Territory shall pay the amount of money appearing by said abstract to be due; and the county treasurer, or the person presenting said order for him, shall endorse on the said order a receipt for so much as shall be paid thereon, and shall also give a duplicate receipt, which shall be deposited with the Superintendent of Common Schools, who shall credit the Treasurer of the Territory therewith, and charge the amount to the proper county, and the treasurer of the county shall disburse the money thus drawn, in such manner as shall hereafter be provided.

CHAPTER II.—*The Superintendent.*

SEC. 6. That there shall be elected, triennially, by the Legislative Assembly, a Superintendent of Common Schools, who shall exercise a general supervision over the interests of Common Schools throughout the Territory.

SEC. 7. That it shall be the duty of said Superintendent to collect all such information as may be deemed important in reference to Common Schools, especially the number of children, the number and quality of schools, the number of scholars in attendance, the amount paid for tuition; also, to collect information of the number of school-houses and the amount expended from year to year for the erection and repairing school-houses, and all other matters in reference to the operation and effect of the Common School system, and report annually to the Legislature the information thus collected, and suggest such improvements, from time to time, as the interests of education may require.

SEC. 8. That it shall be his duty to credit the accounts of the Treasurer of the Territory, and of the several counties, in reference to the receipt and disbursement of the Common School Fund, and see that the funds are not squandered, or diverted from their proper use. He shall visit the several counties throughout the Territory, at least once in each year, to give such information and encouragement as may tend to the successful working of the Common School System. He shall also furnish forms for the district trustees and teachers for keeping their accounts and registers, which forms shall be delivered to the school commissioners, and he shall deliver them to the districts throughout his proper county; and he shall also perform all such other duties as shall be assigned him from time to time by the Legislative Assembly.

SEC. 9. That the said Superintendent may draw on the Treasurer of the Territory for the amount of his incidental expenses, in printing circulars, blank forms, and other matters pertaining to his duties, provided that such draft shall not exceed one hundred dollars in any one year; and he shall also be allowed out of the treasury of the Territory, an annual salary of five hundred dollars.

CHAPTER III.—*School Examiners.*

SEC. 10. That the District Court of each county in this Territory shall, at their spring term next after the passage of this act, appoint three competent men to act as School Examiners, who shall forthwith be notified of their appointment by the clerk of said District Court, and who shall hold their offices for the term of three years, and until their successors are appointed; and the said court shall from time to time fill all vacancies in said Board of Examiners.

SEC. 11. That it shall be the duty of said Board of Examiners to examine all persons who wish to become teachers in their counties; and no person shall be entitled to receive pay for any services rendered as a teacher, out of the Common School Fund, who shall not first have obtained a certificate of qualifications to teach reading, writing, arithmetic, English grammar and geography, and also of good moral character, from said Board of Examiners, or one of them; and furthermore, said Board of Examiners shall certify what other branches the person receiving the certificate is qualified to teach.

CHAPTER IV.—*School Commissioners.*

SEC. 12. There shall be elected by the legal voters of the respective counties, at the annual county elections, a School Commissioner for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

SEC. 13. That it shall be the duty of the said School Commissioner to receive the district reports hereinafter provided for, and record the same in a book kept by him for that purpose; and also transmit a copy of said reports to the territorial Superintendent, and he shall issue orders on the county treasurer in favor of the district treasurers, for the amount of the school funds apportioned to each, on the presentation of which order the treasurer of the county shall pay over to the treasurer of the district all moneys due the respective districts, and the district treasurer, or the person acting for him, shall endorse on said order a receipt for so much as shall be paid thereon, and he shall also sign a duplicate receipt, which shall be deposited with the School Commissioners, who shall credit the treasurer of the county therewith; and charge the same to the proper district.

SEC. 14. That the said School Commissioner shall collect, or cause to be collected, all moneys due the school fund from fines, forfeitures, and penalties, or from any other source in his proper county, and make an accurate report thereof in his annual return to the Superintendent, and he shall preserve the school lands in his proper county from injury or trespass, and when it shall have come to his knowledge that any injury or trespass has been committed, he shall inform the prosecuting Attorney of the county, and it shall be the duty of that officer to prosecute the same, as in other territorial trespasses, or misdemeanors, and all the fines, penalties, and other moneys thus collected, shall be paid over to the treasurer of the county for the use of the Common School Fund, and subject to the order of the Treasurer of the Territory.

SEC. 15. That the said School Commissioner shall keep his office open at the county seat for two days in December and February, each commencing on the first Mondays of each respectively, and on such other days as the duties of his office may require; and he shall be allowed out of the county treasury the sum of three dollars per day for every day so employed.

CHAPTER V.—*District Directors.*

SEC. 16. That there shall be three Directors elected annually, at the annual meeting of the qualified voters of the district, on the first Friday of November, who shall be sworn into office, and hold their office for one year, or until their successors are elected and qualified.

SEC. 17. That it shall be the duty of the said Directors to meet within ten days after their election, and take an oath or affirmation of office faithfully to discharge the duties of the office to which they have been elected, and to the best of their ability promote the true interest of education within their district; which oath may be administered by either of said Directors, or a Justice of the Peace.

SEC. 18. That said Directors shall elect from their own number a clerk of the district, who shall also be district treasurer; and the said Director so chosen clerk and treasurer, as aforesaid, previous to entering on the duties of said office, shall give bond and security to be approved by said Board of Directors, conditioned for the faithful disbursement of all moneys that shall come into his hands belonging to the said district, which said bond shall be made payable to the Territory of Oregon, and when such bond shall be forfeited, it shall be the duty of the other members of the Board of Directors to sue for, and collect the same for the use of the district; and said clerk shall keep in a book of records of said district, a full and accurate record of all the proceedings of the Directors and district meetings, which shall be signed by the chairman, and countersigned by the clerk, as evidence of its correctness.

SEC. 19. That the said Board of Directors, and their successors in office, shall be a body politic, and corporate in law, and as such, shall be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded in any court of law or equity in this Territory; be capable of receiving any gift, grant, donation or devise, made to or for the said district, and may receive a deed of conveyance, or lease, for any land whereon to build a school-house, or houses, which lease or deed shall be made to said Directors and their successors in office, or to the district, and in either case, the corporate body hereby created, shall be deemed the grantee or lessee, and shall hold the same to and for the sole use of such district. They shall also examine all accounts of the district treasurer, and they shall order the payment of all moneys that shall come into, or that shall be in the county treasury, for the use of such district, and at the close of the year they shall examine the annual account of the district treasurer, and cause the same to be entered of record, and signed by the Directors, if approved.

SEC. 20. The said Directors, any two of whom shall constitute a quorum for business, shall have power to select sites for school-houses and purchase the same, to repair and keep in order the school-houses in the district, to provide fuel for the school or schools, and for necessary repairs; to contract for the erection of a school-house or houses, and provide such furniture therefor as may be necessary, when any funds have been voted and assessed by a vote to the district for such purposes, and ordered to be so applied.

SEC. 21. That such Directors shall establish a sufficient number of schools, and employ one or more teachers, either male or female, and see that reading, writing, arithmetic, English grammar, and geography, shall be taught in the English language; and they shall faithfully appropriate and expend in the support of such school or schools all moneys belonging to the district for that purpose. They shall determine how and when the funds shall be expended, and they shall perform all other such lawful acts as may from time to time be required of them by any district meeting, and as may be necessary to carry into full effect the provisions of this act: *Provided*, That in all cases during the period when the public money is applied for the support of the schools, said school shall be free to all the children of the district, between the ages of four and twenty-one years: *Provided further*, That said Directors may admit persons to school over twenty-one years of age, on their paying such tuition fee as said Directors may require: *Provided further*, That nothing in this section shall be so construed as to prevent any other language in addition to the English from being taught in the Common Schools at the discretion of the Directors.

SEC. 22. That said Directors shall, at the annual district meeting, by their clerk, or by some other person, by them appointed before the election of the officers of the ensuing year, report in writing an official account of their proceedings for the preceding year, showing the amount of school funds apportioned to the district, and how it has been expended, how many schools have been taught, for what time, and amount of salaries paid to teachers, the number of children in the district between the ages of four and twenty-one years, and how many have been in attendance in the school during the year, the branches taught, the amount of money raised by district tax, for purchasing, building, repairing school-houses, or any other purpose, with an account of all the disbursements; and shall also report such other information to the meeting as shall be thought useful, which report, or a copy of it, shall, by the clerk of the district, be delivered to the school commissioner of the proper county, on or before the first day of December; and the district failing so to deliver the annual report, as before provided, to the school commissioner, shall forfeit its apportionment of the Common School Fund for the ensuing year.

CHAPTER VI.—*Teachers.*

SEC. 23. That it shall be the duty of every teacher of the common district school to procure a certificate of qualification and good moral character before entering on the duties of a teacher, and no person failing or neglecting so to procure said certificate, shall be allowed to receive pay out of the Common School Fund. It shall also be the duty of every teacher employed to teach a common district school, to enter in a book provided by the district clerk for that purpose, the names of all the children attending school, their ages, the date when they commenced, the length of time they continued, and keep a table showing the daily attendance of each scholar, and also the names of their parents or guardians, which book shall be open at all times for the inspection of all persons interested, and be delivered over by the teacher to the district clerk at the expiration of the term of the school, or once in every three months.

CHAPTER VII.—*Formation of School Districts.*

SEC. 24. That the people of any town or neighborhood shall have power, until otherwise provided for by law, to form school districts, and perform all acts and duties therein, in accordance with the provisions of this act: *Provided*, That ten days' notice shall be given of such purposed organization, by putting up written notices in the three most public places in the town or neighborhood where such district is proposed to be formed.

SEC. 25. That it shall be the duty of the School Commissioners of the several counties before the first day of January, A. D. 1851, to lay off their respective counties into school districts in the manner most convenient for the population and different neighborhoods thereof, paying due regard to any school-houses already erected, school districts already laid off, and other circumstances proper to be considered, so as to promote the interests of all the inhabitants of the county, and so as to include all the territory of the county; and said School Commissioners shall prepare maps or plats, upon which the boundary lines of all the districts shall be laid down, with such references to the adjacent tracts of land along the lines or at the corners, or such localities that the said lines and corners can be ascertained by examining such maps or plats, which districts shall be regularly marked and numbered on said maps or plats, which maps or plats shall be delivered to the Board doing county business, and their approval thereof shall be a sufficient confirmation of the same, and a copy of said maps or plats shall be kept in the offices of the School Commissioners for the inspection of all persons interested.

SEC. 26. That when it is proposed to change the boundaries of districts, or form new districts, twenty days' notice thereof shall be given, by putting up written notices in three public places in the districts affected thereby, and thereupon the Board doing county business, on petition being presented to them praying therefor, if in their judgments the interests of the several districts concerned would be promoted, shall order such alteration, or the formation of such new district; and such alteration, or the formation of such new district, shall be distinctly marked on the map or plat of districts for the county.

CHAPTER VIII.—*Powers and Duties of District Meetings.*

SEC. 27. That there shall be hereafter a meeting in each school district, which shall be held on the first Friday of November, annually, at such school-house, or if there be no school-house, at such place in the district as the school directors shall designate: notice of the time and place of holding which meeting shall be posted up by the district clerk in at least three public places in the district ten days before such meeting, and read in each school kept in the district five days before such meeting: *Provided*, That the first annual meeting may be convened on notice given as herein provided by three legal voters of the district, and at all such annual meetings, the voters, being the tax-paying inhabitants of the district, shall organize by appointing a chairman, and the clerk of the district shall act as secretary: or in his absence a secretary shall be appointed *pro tempore*: and the voters present may transact all the ordinary business of the district, and elect the directors, to serve for the ensuing year, as hereinbefore provided. It shall be lawful for a majority of the voters at such annual meeting to determine by vote upon the purchase or erection of a school-house, or the purchase of a lot or lots on which to erect such house, and how much money shall be raised for such purchase, and the purchase of fuel: and for the building, repairing, and furnishing any school-house or school-houses in their districts, which sums of money so voted shall be collected as hereinafter provided: *Provided*, That special meetings of the voters may be called in the district by the directors, on giving ten days' notice as aforesaid, which notice shall also state the particular object or objects of the meeting, and such called meeting shall have power to transact all the business specified in said notice that a regular meeting of said voters could transact: and *Provided*, That no tax shall be levied by the vote of such meeting, unless the notice shall state specifically that such a tax is proposed to be levied, and the object of such tax.

SEC. 28. That a majority of a lawfully convened district meeting, shall have power to levy and collect a tax on all taxable property in the district, for the purpose of building a school-house or houses, and for repairing, renting and furnishing such school-house or houses, and for fuel, and also for the employment of a teacher or teachers, male or female, in the district, which tax shall be levied *ad valorem*, on the assessment made by the county assessor, for county and territorial taxes, and shall not be made to exceed the actual amount ordered by the aforesaid majority of the district meeting.

SEC. 29. That whenever the directors of any district shall determine on levying a tax, not exceeding twenty dollars in any one year, for repairing and furnishing any school-house, or whenever any annual or special meeting of the district shall decide, that a tax sufficient to build a school-house, or to employ a teacher shall be levied, as aforesaid, the clerk of the district shall apply to the county auditor, who, upon being furnished with the names of all the persons liable to taxation within such school districts, shall furnish such director with an abstract of all the property within said district, and the said directors shall levy on all such property the amount of tax so agreed on, by the meeting, or by the directors, under the restrictions aforesaid.

SEC. 30. That if, in making out an abstract of taxable property, as required by this act, the county auditor shall discover that any tract of land is divided by the boundary line between districts, he shall determine, from the best information within his reach, what proportion of the valuation of the tract so divided, will lie in each district, and shall apportion the tax assessed on such tract, to and amongst the districts, according to the relative value thereof, lying in each.

SEC. 31. That the district treasurer, to whom a tax duplicate shall have been delivered, shall within the time prescribed for the payment of such tax, in manner aforesaid, personally demand the same of the several persons charged therewith, if they be found within his district; and if such tax be not paid before the expiration of the time so prescribed, the said district treasurer may then collect the same by distress and sale of personal property, in the same manner as county collectors are authorized to do in the collection of territorial and county taxes, and shall be allowed the same fees for his services under the provisions of this section, as are allowed to county collectors for similar services; and if the tax so assessed on real property shall remain unpaid for three months after the expiration of the time prescribed as aforesaid, for the payment thereof, and if sufficient personal property belonging to such persons as cannot be found within the district, whereof to make such tax by distress and sale, the district treasurer shall report such delinquent or delinquents to the auditor of the county, and the auditor on being satisfied of the correctness of the proceedings, shall, on making out the territorial taxes next thereafter, enter such delinquent tax in a separate column of such duplicate, to be collected as other taxes, and when so collected, to be paid over to the district treasurer, for the use of such district.

SEC. 32. That whenever a school is kept in any district, the teacher of which shall be supported out of the general Common School Fund, or by taxation as aforesaid, such school shall be open and free to all children between the ages of four and twenty-one years, in such districts.

SEC. 33. That it shall be the duty of the district directors, to visit and examine the school or schools of their respective districts, at the commencement and close of each term of school, and as often at other times as they may deem necessary to the efficiency of the school or schools, and also, when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of undutiful and disorderly scholars to the district directors, who shall decide how he shall be punished, or whether he shall be dismissed from school.

SEC. 34. That no preference shall be given, or discrimination made on account of religious opinions, whether with the pupil or the teacher; nor shall any by-laws be enacted by any district, that will or may in any way interfere with the rights of conscience, in the free exercise of religious worship.

SEC. 35. That when it shall so occur that any district, by reason of the sparseness of its population, or their scattered condition, may not be able to keep a school, if such district will organize and make the annual report to the School Commissioner, according to this act, they shall be entitled to their just portion of the funds accruing to their county, and it shall be the duty of the School Commisioner to loan the money of such district, on good security, at six per centum interest, from year to year, and until such district shall want it to support a school.

SEC. 36. That the Superintendent shall have discretionary power in regard to visiting the several counties for the next ensuing year.

SEC. 37. That this act shall take effect, and be in force from and after its passage.

Passed, 5th September, 1849.

AN ACT, *to amend an act entitled "An act establishing a system of Common Schools."*

(181)

SEC.
1. Three Examiners to be elected at the annual election in each county. Their duties.

SEC.
2. School districts failing to report, etc, not to forfeit school money for the years 1850 and 1851.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That at each annual election in each county in this Territory, there shall be elected three suitable persons to serve as School Examiners in their respective counties, to do and perform all and singular the duties required of Examiners by the act to which this is an amendment.

SEC. 2. And the district failing to deliver the annual report as provided for in the fifth chapter of the act to which this is an amendment, shall not forfeit its apportionment of the Common School Fund for the years eighteen hundred and fifty, and fifty-one.

Passed the Council, January, 22d, 1851.
Passed the House of Representatives, January 28th, 1851.

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(182)

AN ACT, *to abolish the office of Superintendent of Common Schools.*

SEC.
1. Office of Superintendent of Common Schools abolished.
2. County Commissioners to perform duties of Superintendent in their counties.
3. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the office of Superintendent of Common Schools be and is hereby abolished.

SEC. 2. That the county commissioners of each county shall perform all the duties of the Superintendent of Common Schools so far as any funds arising from any tax collected for the use of Common Schools may be collected, and said county commissioners shall make an equitable distribution of said fund for the use of the particular county where the same is collected.

SEC. 3. This act to take effect and be in force from and after its passage.

Passed the House of Representatives, February, 7th 1851.
Passed the Council, February 7th, 1851.

COUNTY COMMISSIONERS.

AN ACT, *to establish a Board of County Commissioners.*

(183)

SEC.
1. Number of Commissioners in each county. When and how elected, and term of office.
2. Upon first election under the act how term of office determined. Absence of Commissioner vacates, etc.
3. Term of office when elected to fill a vacancy by death, etc.
4. Commissioners to take an oath, and deposit a certificate thereof with the Auditor.
5. The Board constitutes a body corporate to sue and be sued. Authorized to sue on subscriptions for public buildings and bridges, etc.
6. When and where to hold four sessions annually.
7. To examine public accounts and funds of county at July session, and direct publication of exhibit.
8. When they may make contracts in relation to the public buildings, etc.

9. What contracts for repairs, they may authorize the Auditors to make
10. In what cases they may compound for or release, a debt, etc, due the county.
11. They shall not be concerned in any contract for the county. Penalty therefor.
12. They may administer oaths.
13. They shall provide a place for holding courts until buildings are erected.
14. When and how an appeal may be taken from their decision to the District Court. Trial and decision in Court.
15. Commissioner convicted on indictment for misconduct in office shall be removed and fined.
16. All prior acts repealed. Transfer of the powers, duties, etc., from the Probate Court to the Board of County Commissioners.
17. Probate Judges to act as County Commissioners for the residue of the unexpired term.
18. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be established in each organized county in this Territory a Board of Commissioners, to consist of three persons having the qualification of electors, to be elected by the qualified electors thereof, at an annual election in September, who shall hold their office for three years, except as hereinafter provided; and are hereby authorized and empowered to do and perform all such duties as now are, or may hereafter be required of them by law.

SEC. 2. That the Commissioners first elected under this act in any county in this Territory, shall hold their office for the term of one, two, and three years, to be by them determined by lot at their first session: *Provided*, That if any Commissioner shall absent himself from the county in which he is elected for six months in succession, it shall be deemed a resignation of his office.

SEC. 3. That whenever it becomes necessary to elect a Commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected shall hold his office for the unexpired period for which his predecessor was elected, and until his successor is elected and qualified.

SEC. 4. That before any Commissioner shall enter upon the duties of his office, he shall take an oath, or affirmation, before some person authorized to administer the same, faithfully and impartially to discharge the duties of a Commissioner of the county in which he resides, and deposit a certificate thereof with the auditor of the county, to be by him filed and carefully preserved.

SEC. 5. That the Board of Commissioners in the several counties of this Territory shall be capable of suing and being sued, pleading and being impleaded, in any court of judicature within this Territory; and they are hereby authorized and required to ask, demand, and recover by suit, or otherwise, any sum or sums of money or other property due to such county on account of advances made by them on any contract with any person or persons, for the erection or repairs of any public buildings or bridges, or any other contract, which, by the provisions of this act, they are authorized to enter into; and, in like manner, to sue for, and recover in money, the value, or amount of any labor, or article of value subscribed instead of money, to aid in erecting, or repairing public buildings or bridges, when such labor or article of value, upon their requisition, shall not have been performed, delivered, or paid in a reasonable time; and the money so recovered in either of the above cases, shall be by them paid into the treasury of the county, and they shall take the treasurer's receipt, and file the same with the auditor of the county.

Sec. 6. That the Board of Commissioners shall hold four sessions annually at the seat of justice in their respective counties, commencing on the first Mondays of April, July, September, and December; at all of which they shall transact any business which may be required of them by law.

Sec. 7. That at the July session the Commissioners shall examine and compare the accounts and vouchers of the county auditor and treasurer, count the funds in the treasury, and direct the auditor to publish an exhibit of the receipts and expenditures of the past year.

Sec. 8. That the Commissioners at any of their stated meetings, or at any extra session which they are hereby authorized to hold for the purpose, may make any necessary order or contract in relation to the building, finishing, furnishing, or repairing the public buildings, poor-houses, or bridges, the improvement or inclosure of the public grounds, or the maintenance and support of idiots or lunatics.

Sec. 9. That the County Commissioners be, and they are hereby authorized to empower the county auditor of their respective counties, to contract for the making of such repairs or improvements on the public buildings, or public grounds of their counties as may be necessary: *Provided*, The cost of such repairs or improvements shall not exceed one hundred dollars each year.

Sec. 10. That the Commissioners of the respective counties shall have power to compound for, or release, in whole, or in part, any debt due to their county, and for the use thereof, when in their opinion, the interests of such county will not be prejudiced thereby; except in cases, where they or either of them, are personally interested: *Provided*, That nothing in this act, shall be so construed as to give such Commissioners power to compound for, or release in whole, or in part, any debts, except those arising out of some contract or undertaking with said Commissioners.

Sec. 11. That no Commissioner shall directly or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action of debt for the use of the county; and such Commissioner shall, moreover, forfeit any compensation he was to receive on such contract; any thing in the same to the contrary notwithstanding.

Sec. 12. That the Commissioners, or either of them, are hereby authorized and empowered, to administer all oaths or affirmations necessary in discharging the duties of their respective offices.

Sec. 13. That until proper buildings are erected at a place fixed upon, for the permanent seat of justice in any county, it shall be the duty of the County Commissioners to provide some suitable place for holding the courts of such county.

SEC. 14. That if any person or persons shall conceive him, her, or themselves, aggrieved by the decision of the Commissioners, in any case, such person or persons may within fifteen days thereafter, appeal to the next term of the District Court, notifying the Commissioners of such appeal, at least ten days before the time of trial; which notice shall be in writing and delivered personally to the Commissioners, or left with the auditor of the county; and the said court shall, at their next term, hear and determine the same; which decision shall be final.

SEC. 15. That if any Commissioner shall be guilty of any misconduct in office, he shall, on conviction thereof, by indictment before the District Court of the proper county, be immediately removed from office, and fined at the discretion of said court, in any sum not exceeding five hundred dollars, with costs; which fine shall be paid into the county treasury for the use of the county.

SEC. 16. That all laws or parts of laws, heretofore passed upon this subject, conflicting with the provisions of this act, be, and hereby are repealed: *Provided*, That all rights, remedies, liabilities, records and papers, of whatever nature, now pertaining or belonging to the Probate Court of each county, in the capacity of County Commissioners be, and the same are, hereby transferred to the County Commissioners elected under this act.

SEC. 17. Nothing in this act shall be so construed, as to prevent the several persons in the several counties in this Territory, now holding the office of Probate Judges, from acting as a Board of County Commissioners in their respective counties, under the provisions and within the meaning of this act, for the residue of the unexpired term for which they may have been elected as Probate Judges aforesaid; and they are hereby empowered and authorized, to do and perform all and singular, the duties of County Commissioners, within their respective counties, for the residue of such term according to law.

SEC. 18. This act to take effect, from and after the first day of June next.

Passed the Council, January 14th, 1851.

Passed the House of Representatives, January 20th, 1851.

CRIMES AND MISDEMEANORS.

(184)

An Act, *to define Crimes and Misdemeanors, and to provide for their punishment.*

FIRST CLASS.

Punishment by Death, or Imprisonment in the Penitentiary.

Sec.
1. Murder, first degree.
2. Murder, second degree.
3. Manslaughter.
4. Rape upon daughter or sister.
5. Rape upon other female. Carnal knowledge of a child under ten years of age.
6. Carnal knowledge of insane women.
7. Bigamy.
8. Incest.
9. Perjury.
10. Subornation of Perjury.
11. Indictment for Perjury and subornation.
12. Arson.
13. Attempt to commit arson.
14. Burglary.
15. Robbery.
16. Entering house, &c., by night or day, without breaking, and attempting to commit a felony.
17. Assault, with intent to commit murder, rape, or robbery.
18. Grand Larceny.
19. Stealing or destroying bonds, receipts, &c., of the value, &c.
20. Falsely personating another.
21. Forgery. Uttering forged instruments.
22. Maiming or disfiguring another, with intent, &c.
23. Shooting at, stabbing, &c., with intent, &c.
24. Duelling, challenging, encouraging, accepting, or bearing challenge.
25. Receiving or buying goods taken by thief or robber. Harboring or concealing thief or robber.
26. Horse Stealing. Receiving or buying stolen horse. Concealing such horse or horse thief
27. Counterfeiting Coin. Uttering or putting off such coin; or making or keeping instruments to counterfeit coin.
28. Gilding current coin.
29. Attempting to pass counterfeit coin.
30. Selling or conveying land without title
31. Administering poison, with intent to kill, or preparing it with that intent. Aiders or abettors
32. Guards, &c., of Penitentiary, assisting prisoners to escape.

Sec.

33. Aiders and abettors of any of the crimes mentioned in the preceding sections.
34. Accused to be tried in county where mortal blow, &c., given, though death ensue in another county.
35. The sentence, judgment and execution, when a person is convicted of a Penitentiary offence.
36. In trials for murder, jury to ascertain the degree of the crime, or Court may do so when there is a plea of guilty.
37. Punishment of death to be by hanging. Sheriff to be executioner.
38. For what crimes the convict is disfranchised, unless pardoned. Pardon not to release costs of conviction.

SECOND CLASS.

Punished generally by Imprisonment in County Jail, or Fine, or both.

39. Breaking open house, &c., in the night, and committing, or attempting personal abuse, &c.
40. Committing like offence in the daytime
41. Riot.
42. Judges and peace officers to warn rioters to disperse, and may call to their aid the power of the County. Persons refusing assistance to be fined.
43. Obstructing authorities, or continuing together after proclamation, &c., or committing an unlawful act, &c.
44. If any rioters be injured or killed in resisting peace officers, the slayer held guiltless.
45. Resisting or abusing judicial or ministerial officers, in the execution of their offices.
46. Assault and battery.
47. Judicial or ministerial officers demanding or receiving unlawful fees.
48. Obtaining money by false pretences. Making fraudulent transfer of property to cheat creditors.
49. Usurpation of, or oppression in office.
50. Judicial or ministerial officers, or Attorneys stirring up, or encouraging suits, quarrels, &c.
51. Ministerial officers corruptly oppressing or injuring, under color of office.

Sec.
52. Destroying bridges. Altering or removing landmarks.
53. Defacing or destroying monument or tombstone.
54. Digging up, or attempting, or aiding to dig up, or to carry away a dead body.
55. Altering or defacing ear mark or brand.
56 Refusing to aid officer in arresting, securing, &c., a criminal.
57. Sending or delivering threatening letters to extort money, &c.
58. Living and cohabiting in adultery.
59. Living and cohabiting in a state of fornication.
60. Libel.
61. Sheriff, &c, suffering criminal to escape.
62. Rescue of criminal, or person charged with crime.
63. Assisting criminal, &c, to escape, though no escape be made.
64 Attempting to corrupt or influence juror or witness.
65. Juror or witness receiving bribe.
66. Witness refusing to take oath or affirmation
Sec.
67. Bribing, or attempting to bribe a Judge, Justice, or Arbitrator.
68. Bribing, or attempting to bribe an officer to procure the escape of a criminal, &c.
69. Burning, or setting fire to certain personal property, &c.
70. Maliciously setting fire to woods, prairies, &c.
71. Maliciously killing of horses or other beasts, the property of another, which are not trespassing.
72. Maliciously destroying fruit, or other trees, in nursery yard, &c.
73. Malicious destruction of ornamental trees in a street, or upon a public ground.
74. All prosecutions under this act to be by indictment.
75. And fines to be paid to the County treasury.
76 And the indictment to be endorsed for costs, &c, unless, &c.
77. When the endorser liable, judgment to be rendered against him
78. Act repealed. Saving, &c.
79. When act to take effect.

FIRST CLASS.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That if any person shall purposely, and of deliberate and premeditated malice, or in the perpetration or attempt to perpetrate any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death.

Sec. 2. That if any person shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor during life.

Sec. 3. That if any person shall unlawfully kill another, without malice, either upon a sudden quarrel, or unintentionally, while the slayer is in the commission of some unlawful act, every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than ten years, nor less than one year.

Sec. 4. That if any person shall have carnal knowledge of his daughter or sister, forcibly, and against her will, every such person so offending shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor during life.

Sec. 5. That if any person shall have carnal knowledge of any other woman or female child, than his daughter or sister as aforesaid, forcibly and against her will; or if any male person of the age of seventeen years and upwards, shall carnally know and abuse any female child under the age of ten years, with the consent, every such person so offending shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor, not more than twenty, nor less than three years.

SEC. 6. That if any male person, seventeen years old and upwards, shall have carnal knowledge of any woman other than his wife, such woman being insane, he knowing her to be such, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor, not more than ten, nor less than three years.

SEC. 7. That if any married person having a husband or wife living, shall marry any other person, every person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary and kept at hard labor, not more than seven years nor less than one year; but nothing contained in this section shall be construed to extend to any person whose husband or wife shall be continually and wilfully absent for the space of five years together, and unheard from, next before the time of such marriage.

SEC. 8. That if any stepfather shall have sexual intercourse with his stepdaughter, knowing her to be such, or if any stepmother and her stepson shall have sexual intercourse together, having knowledge of their relationship; or any father shall have sexual intercourse with his daughter, knowing her to be such; or if any brother and sister being of the age of sixteen years or upwards, shall have sexual intercourse together, having knowledge of their consanguinity; every stepfather, stepmother, stepson, father, brother, or sister so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than ten nor less than three years.

SEC. 9. That if any person, on his or her oath or affirmation, in any action, plea, suit, bill, petition, answer, complaint, indictment, controversy, matter or cause, depending, or which may depend, in any of the courts in this Territory, civil, criminal, or military; or in any affidavit or deposition, to establish any account stated, demand, or bill of particulars to be presented to any executor or administrator for settlement; or before any Justice of the Peace, referees or arbitrators, or before any other person having authority by the laws of this Territory to administer an oath; or in or before the Council or House of Representatives of the Legislature of this Territory, or any committee thereof (in any deposition or affidavit, or other oath or affirmation taken or made pursuant to the laws of this Territory, or in any resolution of the Council and House of Representatives of the Legislature of this Territory, or of either of them), shall wilfully and corruptly depose, affirm, or declare any matter to be fact, knowing the same to be false; or shall in like manner deny any matter to be fact, knowing the same to be true; every person so offending shall be deemed guilty of perjury, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than ten nor less than three years.

SEC. 10. That if any person shall persuade, procure, or suborn any other person to commit wilful and corrupt perjury; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than ten nor less than three years.

SEC. 11. That in every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have full power to administer the same, together with the proper averments or counts to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of any record or proceeding in law or equity other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed.

SEC. 12. That if any person shall wilfully and maliciously burn or cause to be burned any dwelling-house, kitchen, smoke-house, shop, barn, stable, storehouse, warehouse, malt-house, stilling house, mill or pottery, the property of any other person; or any other buildings, the property of any other person, of the value of fifty dollars, or containing property of the value of fifty dollars, or any church, meeting-house, court house, workhouse, school-house, jail, or other public building; or any ship, boat, or other water craft, of the value of fifty dollars; or any bridge of the value of fifty dollars erected across any of the waters within this Territory; every person so offending shall be deemed guilty of arson, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than twenty years nor less than one year.

SEC. 13. That if any person shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than seven years nor less than one year.

SEC. 14. That if any person shall, in the night season, wilfully, maliciously, and forcibly break and enter into any dwelling-house, kitchen, smoke-house, shop, office, storehouse, warehouse, meat-house, still-house, mill, pottery, factory, water craft, school-house, church, or meeting-house, with intent to kill, rob, commit a rape; or with intent to steal property of any value, or to commit any deed by this act made criminal; every person so offending shall be deemed guilty of burglary, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, for not more than ten nor less than three years.

SEC. 15. That if any person shall forcibly and by violence, or by putting in fear, take from the person of another any money or personal property of any value whatever with intent to rob or steal; every person so offending shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than fifteen nor less than three years.

SEC. 16. That if any person shall wilfully and maliciously, either in the daytime or night season, enter any dwelling-house, kitchen, shop, store, warehouse, malt-house, still-house, mill, factory, pottery, water craft, school-house, church or meeting-house, smoke-house, barn or stable, and shall attempt to kill, disfigure, or maim any person, rob, stab, commit a rape or arson; every person so offending, his or her aiders or abettors, counsellors or procurers, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than ten years, nor less than one year.

SEC. 17. That if any person shall assault another with intent to commit a murder, rape, or robbery, upon the person so assaulted, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than seven, nor less than three years.

SEC. 18. That if any person shall steal any money, or other personal goods or chattels, the property of another, of the value of thirty-five dollars or upwards, the person so offending shall be deemed guilty of larceny, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than seven years, nor less than one year.

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SEC. 19. That if any person steal, or maliciously and feloniously destroy any promissory note or notes, bill of exchange, order, receipt, warrant, draft, check or bond, given for the payment of money, or receipt acknowledging the receipt of money, or any other property, of the value of thirty-five dollars or upwards, knowing them to be such; every such person shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than seven years, nor less than one year.

SEC. 20. That if any person shall falsely personate any other before any Court of Record, or Judge thereof, or before any Justice of the Peace, clerk of either the Supreme Court or District Court, or any other officer of this Territory, who is or may hereafter be authorized to take the acknowledgment of deeds, powers or warrants of attorney, or to grant marriage licenses, with intent to defraud any person, body politic, or corporate; any person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor for any space of time not exceeding six years, nor less than one year.

SEC. 21. That if any person shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature; or any charter, letters patent, deed, lease, writing obligatory, will, testament, annuity bond, covenant, bank bill or note, check, draft, bill of exchange, contract, or promissory note for the payment of money or other property, or any acceptance of a bill of exchange, or the number of any principal sum of any accountable receipt, for any note; or any order, or any warrant or request for the payment of money, or the delivery of goods and chattels of any kind; or any acquittance or receipt either for money or goods; or any acquittance, release, or dischage of any debt, account, action, suit, demand, or other thing, real or personal; or any plat, draft, or survey of land, or any transfer or assurance of money, stock, goods, chattels, or other property whatever; or any letter of attorney, or any power to receive money, or to receive and transfer stock or annuities; or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal; or any bills drawn by the auditors of public accounts for the payment of money at the treasury, with intent to damage or defraud any person or persons, body corporate or politic; or shall utter or publish as true and genuine, or cause to be uttered and published as true and genuine, any of the above-named false, altered, forged, or counterfeited matter above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate; every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor for any space of time not exceeding twenty years, nor less than three years.

SEC. 22. That if any person shall voluntarily, unlawfully, and on purpose, cut or bite the nose, lip or lips, ear or ears, or cut out or disable the tongue; put out an eye; slit the nose, ear, or lip; cut or disable any limb or member of any person, with intent to murder, kill, maim, or disfigure such person; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than twenty years, nor less than one year.

SEC. 23. That if any person shall maliciously shoot, stab, or shoot at, any other person, with intent to kill, wound, or maim such person; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than twenty years, nor less than one year.

SEC. 24. That if any person shall engage in or fight a duel with another, or shall be second to such person who shall fight a duel; or if any person shall, by word, message, letter, or in any other way challenge another to fight a duel; or shall accept a challenge to fight a duel, although no duel be fought; or shall, knowingly, be the bearer of such challenge; or shall advise, prompt, encourage, or persuade any person to fight a duel, or challenge another to fight a duel, whether such duel be fought or not; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than ten, nor less than one year; and shall for ever after be incapable of holding any office of honor, profit, or trust, within this Territory: *Provided, however*, If death issue from such duel, the person or persons concerned shall be deemed guilty of murder, and shall be punished for murder in the first or second degree (as the case may be) as is provided in this act; any thing in this section to the contrary notwithstanding.

SEC. 25. That if any person shall receive or buy any goods or chattels, of the value of thirty-five dollars or upwards, that shall have been stolen or taken by robbers, knowing the same to be stolen or taken by robbers, with intent to defraud the owner, or shall harbor or conceal any thief or robber, knowing him or her to be such; any person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than seven years, nor less than one year.

SEC. 26. That if any person shall steal any horse, mare, gelding, foal or filly, ass or mule, of any value; or if any person shall receive or buy any horse, mare, gelding, foal or filly, ass or mule, that shall have been stolen, knowing the same to have been stolen, with intent, by such receiving or buying, to defraud the owner; or if any person shall conceal any horse-thief, knowing him to be such; or if any person shall conceal any horse, mare, gelding, foal or filly, ass or mule, knowing the same to have been stolen; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labor not more than fifteen, nor less than three years.

SEC. 27. That if any person shall counterfeit any of the coins of gold, silver, or copper, currently passing in this Territory; or shall alter or put off counterfeit coin or coins, knowing them to be such; or shall make any instrument for counterfeiting any of the coins aforesaid, knowing the purpose for which such instrument was made; or shall knowingly have in his possession and secretly keep, any instrument for the purpose of counterfeiting any of the coins aforesaid; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than fifteen, nor less than three years.

SEC. 28. That if any person shall gild any of the silver coins currently passing in this Territory, or shall gild any other metal having the likeness and similitude of any of the coins currently passing in this Territory, so as to give it the appearance of any of the gold coin of the United States, or any other gold coins currently passing in this Territory, with intent to injure or defraud; or if any person shall pass or put in circulation any such false or gilded money, knowing that it is not genuine; the person so offending shall, upon conviction thereof, be imprisoned in the Penitentiary, and kept at hard labor, not more than five years nor less than one year.

SEC. 29. That if any person shall attempt to pass any base or counterfeit coin or coins, knowing them to be such; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than five years nor less than one year.

SEC. 30. That if any person or persons shall knowingly sell or convey any tract of land without having a title to the same, either in law or equity, by descent, devise, or evidence by a written contract, or deed of conveyance, with intent to defraud the purchaser; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than seven years nor less than one year.

SEC. 31. That if any person or persons shall administer poison to another with intent to destroy or take the life of the person or persons to whom the same shall be administered, or to do him, her, or them an injury; or if poison shall be prepared with the intent aforesaid, and the same shall be taken by any person or persons, whereby an injury to such person or persons may be done; the person or persons so offending, their aiders and abettors, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the Penitentiary, and kept at hard labor, not more than fifteen nor less than three years.

SEC. 32. That if any of the assistants, guards, or other officers of the Penitentiary, shall procure, aid or abet any of the convicts confined therein to escape therefrom, the persons so offending shall upon conviction thereof be imprisoned in the Penitentiary, and kept at hard labor, for any space of time not greater than the convict thus procured, aided, or abetted to escape, was originally sentenced for.

SEC. 33. That if any person shall aid, abet, or procure any other person to commit any of the offences by this act made criminal; every person so offending shall upon conviction thereof be imprisoned in the Penitentiary, and kept at hard labor, for any time between the respective periods for which the principal offenders could be imprisoned for the principal offence; or if such principal offender would on conviction be punishable with death, or be imprisoned for life, then such aider, abettor or procurer shall be imprisoned for life or be punished with death, as the occasion may require.

SEC. 34. That if any person shall give any mortal blow, or administer any poison to another in any county within this Territory with intent to kill, and the so stricken or poisoned person thereof shall afterwards die in any other county, State or Territory, the person giving such mortal blow or administering such poison, may be tried and convicted of murder or manslaughter, as the case may be, in the county where such mortal blow was given, or poison administered.

SEC. 35. That in all cases where any person shall be convicted of any offence by this act declared criminal, and made punishable by imprisonment in the Penitentiary, the court shall declare in their sentence for what period of time, within the respective periods prescribed by law, such convict shall be imprisoned at hard labor in the Penitentiary; and shall moreover determine and declare in their sentence, whether any, and if any, for what period of time such convict shall be kept in solitary confinement, in the cells of the Penitentiary, without labor; and shall render judgment against such convict for the costs of prosecution, and award execution thereon against the goods and chattels, lands and tenements of said convict.

SEC. 36. That in all trials for murder, the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it is murder in the first or second degree, or manslaughter; and if such person be convicted by confession in open court, the court shall proceed by examination of witnesses in open court to determine the degree of crime, and shall pronounce sentence accordingly.

SEC. 37. That the mode of inflicting the punishment of death, in all cases under this act, shall be by hanging by the neck until the person is dead; and the sheriff, and in case of his death, inability or absence, the coroner of the proper county, in which sentence of death shall be pronounced, by virtue of this act, shall be the executioner.

SEC. 38. That any person sentenced to be punished for any crime specified in this act (when sentence shall not have been reversed or annulled), except under the third and twenty-fifth sections, shall be deemed incompetent to be an elector, juror, or witness, or to hold any office of honor, trust, or profit within this Territory, unless the said convict shall receive from the Governor of this Territory a general pardon, under his hand and the seal of the Territory, in which case said convict shall be restored to all his rights and privileges: *Provided, however*, That such pardon shall not release said convict from the cost of his conviction.

SECOND CLASS.

SEC. 39. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That if any person shall, in the night season, unlawfully break open and enter any mansion-house, shop, store, ship, boat, or other water craft, in which any person shall reside or dwell, and shall commit, or attempt to commit any personal violence or abuse, or shall be so armed with any dangerous weapon, as to indicate a violent intention, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding three hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county, not exceeding thirty days, at the discretion of the court.

SEC. 40. That if any person shall, in the day-time, unlawfully break open and enter any mansion-house, shop, store, ship, boat, or other water craft, in which any person shall or may dwell or reside, and shall commit, or attempt to commit any personal violence, force or abuse, he or she so offending, shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county not exceeding twenty days, at the discretion of the court.

SEC. 41. That if three or more persons shall assemble together with intent to do any unlawful act with force and violence against the person or property of another, or to do any unlawful act against the peace, or being unlawfully assembled shall agree with each other to do any unlawful act as aforesaid, and shall make any movement or preparation therefor, the persons so offending shall each, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county, not exceeding ten days.

SEC. 42. That whenever three or more persons shall be assembled, as aforesaid, and proceed to commit any of the offences aforesaid, it shall be the duty of all Judges, Justices of the Peace and sheriffs, and all ministerial officers, immediately upon view, or as soon as may be, on information, to make proclamation in the hearing of said offenders, commanding them in the name of the Territory of Oregon to disperse, and depart to their several houses or lawful employments; and if, upon such proclamation, such persons shall not disperse and depart as aforesaid, it shall be the duty of such Judges, Justices of the Peace, and sheriffs, and all other ministerial officers respectively, to call upon all persons near, and if necessary, throughout the county, to aid and assist in dispersing and taking into custody all persons assembled as aforesaid; and military officers and others called on as aforesaid, and refusing to render immediate assistance, shall each, upon conviction thereof, be fined in any sum not exceeding twenty-five dollars.

SEC. 43. That if any person shall forcibly obstruct any of the authorities aforesaid, or if any three or more persons shall continue together after proclamation made as aforesaid, or attempted to be made and prevented by such rioters; or in case of a proclamation, any three or more persons being assembled as aforesaid, shall commit any unlawful act as aforesaid, every such offender, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the cell or dungeon of the jail of the county, not exceeding thirty days; and shall, moreover, find security for good behavior and to keep the peace for a term not exceeding one year.

SEC. 44. That if any persons so unlawfully assembled, shall be killed, maimed, or otherwise injured in consequence of resisting the Judges or others in dispersing and apprehending, or in attempting to disperse or apprehend them, said Judges, Justices of the

Peace, sheriffs, and other ministerial officers, and others acting by their authority, or the authority of either of them, shall be holden guiltless: *Provided*, Such killing, maiming, or injury shall take place in consequence of the use of necessary and proper means to disperse or apprehend any such persons so unlawfully assembled.

SEC. 45. That if any person shall abuse any Judge or Justice of the Peace, resist or abuse any sheriff, constable, or other officer in the execution of his office, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, or imprisoned in the cell or dungeon of the jail of the county, not exceeding twenty days, or both, at the discretion of the court.

SEC. 46. That if any person shall unlawfully strike or threaten another in a menacing manner, or shall unlawfully strike or wound another, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding one hundred and fifty dollars, or imprisoned in the cell or dungeon of the jail of the county, not exceeding ten days, or both, at the discretion of the court; and shall, moreover, be liable to the suit of the party injured.

SEC. 47. That if any Judge, Justice of the Peace, coroner, constable, jailer, or other officer of this Territory, either judicial or ministerial, shall knowingly ask, demand, or receive any fee or reward to execute and do his duty, other than is or shall be allowed by the laws of this Territory; every person so offending shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, or imprisoned in the cell or dungeon of the jail of the county, not exceeding ten days, or both, at the discretion of the court; and, for seven years thereafter, be incapable of holding any office of honor, profit, or trust in this Territory.

SEC. 48. That if any person, by any false pretence or pretences, shall obtain from any other person any money, goods, merchandise, or effects whatever, with the intent to cheat and defraud such person of the same; or shall fraudulently make and transfer any bond, bill, deed of sale, gifts, grants, or other conveyances to defeat his creditors of their just demands, such person so offending, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned in the cell or dungeon of the jail of the county not exceeding ten days, or both, at the discretion of the court.

SEC. 49. That if any person shall take upon himself to exercise or officiate in any office or place of authority in this Territory, without being legally authorized; or if any person, by color of his office, shall wilfully and corruptly oppress any person, under pretence of acting in his official capacity; the person so offending shall, upon conviction thereof, be fined in any sum not exceeding two hundred and fifty dollars, or imprisoned in the cell or dungeon of the jail of the county, not exceeding ten days, or both, at the discretion of the court.

SEC. 50. That if any Judge, Justice of the Peace, clerk of any court, sheriff, coroner, constable, attorney or counsellor-at-law, shall encourage, excite and stir up any suit, quarrel or controversy between two or more persons, with intent to injure such person or persons, such Judge, Justice of the Peace, clerk, sheriff, constable, attorney or counsellor-at-law shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages.

SEC. 51. That if any sheriff, coroner, constable, jailer, clerk, county recorder, county auditor, county treasurer, or county assessor, by color of, or in execution of his office, shall designedly, wilfully, or corruptly injure, defraud, or oppress any person, or shall attempt to defraud, injure, or oppress any person; such sheriff, coroner, constable, jailer, clerk, county recorder, county auditor, county treasurer, or county assessor, shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be answerable to the party so injured, defrauded, or oppressed, in treble damages.

SEC. 52. That if any person shall, knowingly, wilfully, and maliciously, demolish, cut down, or destroy any private, public, or toll bridge; cut, fill, deface, alter, or remove any landmark, corner, or bearing tree, properly established; the person so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days, or both, at the discretion of the court.

SEC. 53. That if any person shall wilfully and maliciously alter, deface, break down, or destroy any monument or tombstone, erected or set up to perpetuate the memory of any deceased person; every person so offending, shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, and be kept in solitary confinement in the cell or dungeon of the county jail, not exceeding thirty days, at the discretion of the court.

SEC. 54. That if any person shall wantonly dig or take up any corpse or dead human body, buried or interred in any cemetery or burying ground, either public or private, or shall attempt so to do; or shall carry away from such cemetery or burying ground any such corpse or dead body; or shall aid, assist, or be in any way concerned, either in the attempt, or in digging or taking up, or in carrying away such corpse or dead body as aforesaid; every person so offending in either of the aforesaid instances, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars, or be imprisoned in the cell or dungeon of the county jail, not exceeding thirty days, or both, at the discretion of the court.

SEC. 55. That if any person shall wilfully and maliciously alter or deface any artificial ear mark or brand upon any horse, mare, foal or filly, mule or ass, sheep, goat, or swine, cow or steer, bull or heifer, the property of another; every person so offending, shall, on conviction thereof, be fined in any sum not exceeding fifty dollars, and be liable in treble damages to the party injured.

SEC. 56. That if any person, having been called upon by the sheriff or other ministerial officer in any county in this Territory, to assist such sheriff or other officer in apprehending any person charged with or convicted of any offence against any of the laws of this Territory, or in securing such offender when apprehended, or in conveying such offender to the jail of the county, shall neglect or refuse to render such assistance, every person so offending, shall, upon conviction thereof, be fined in any sum not exceeding fifty dollars.

Sec. 57. That if any person shall, knowingly, send or deliver any letter or writing with or without a name subscribed thereto, or signed with a fictitious name, containing wilful and malicious threats of injury of any kind whatsoever, or with intent or for the purpose of extorting money or other valuable things from any person, every person so offending shall, upon conviction thereof, be fined in any sum not less than fifty, nor more than five hundred dollars, or be imprisoned in the cell or dungeon of the jail of the county not exceeding ten days, or both, at the discretion of the court.

Sec. 58. That if any married woman shall hereafter desert her husband, and live and cohabit with another man in a state of adultery, she shall, upon conviction thereof, be imprisoned in the cell or dungeon of the jail of the county, not exceeding thirty days; and if any married man shall hereafter desert his wife, and live and cohabit with another woman in a state of adultery; or if any married man living with his wife shall keep any other woman, and notoriously cohabit with her in a state of adultery; or if any unmarried man shall live and cohabit with a married woman in a state of adultery; every person so offending, shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days, at the discretion of the court.

Sec. 59. That if any unmarried persons shall live and cohabit together in a state of fornication, such persons so offending, shall each, on conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the cell or dungeon of the county jail not exceeding ten days.

Sec. 60. That if any person shall write, print, or publish any false or malicious libel of or concerning another, or shall cause or procure any such libel to be written, printed, or published; every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and, moreover, be liable to the party injured.

Sec. 61. That if any sheriff, coroner, jailer, or other person whatsoever, having any offender in custody, charged with or convicted of any offence made punishable by the laws of this Territory, shall voluntarily suffer such offender to escape and go at large; every sheriff, coroner, jailer, or other person so offending, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned in close confinement not exceeding ten days, or both, at the discretion of the court.

SEC. 62. That if any person shall rescue by force any offender, charged with, or convicted of any offence, by the laws of this Territory made punishable with imprisonment, from any jail or other place of confinement, or from the custody of any officer, or other person charged with the safe keeping of such offender; every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days.

SEC. 63. That if any person shall aid or assist any prisoner confined in any jail or other place of confinement, charged with, or convicted of any offence against the laws of this Territory, to make his or her escape from such jail or place of confinement, although no escape be actually made; every person so offending shall, upon conviction thereof, be fined not more than five hundred, nor less than fifty dollars; or be imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days, or both, at the discretion of the court.

SEC. 64. That if any person shall attempt to corrupt or influence any juror, or witness, either by promises, threats, letters, money, or other undue means, either directly or indirectly; every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days.

SEC. 65. That if any juror or witness shall corruptly take and receive any money, goods, chattels, or other reward, either directly or indirectly, in any action or suit instituted before any court having jurisdiction thereof; such juror or witness so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days.

SEC. 66. That if any person legally called upon to give testimony before any court or other authority in this Territory, authorized to administer oaths and affirmations, shall refuse to take an oath or affirmation, such court or authority may commit the person so refusing to prison, until he or she shall consent to take such oath or affirmation; and after the person committed to prison, as aforesaid, shall have taken the oath or affirmation required, the court or authority aforesaid may, moreover, punish such person for such refusal by a fine not exceeding twenty dollars.

SEC. 67. That if any person shall directly or indirectly, in any way or manner, give, promise, or contract to give any money or other valuable things, with intent to obtain, procure, or influence the opinion, judgment, or decree of any Judge, or Justice of the Peace of this Territory, or arbitrator in any action, suit, complaint, indictment, controversy, matter or cause, depending or which shall depend, before him or them, or before any court in this Territory; every person so offending shall, upon conviction thereof, be fined in any sum not less than fifty nor more than one thousand dollars.

SEC. 68. That if any person shall, by bribery, persuasion, seduction, or any other arts or means whatever, attempt to prevail upon any ministerial officer or other person charged with the safe keeping of any person accused or convicted of any offence against the laws of this Territory, to permit such person to escape from the custody of such officer or other person; every person so offending shall, upon conviction thereof, be fined in any sum not more than two hundred, nor less than twenty-five dollars.

SEC. 69. That if any person shall wilfully or maliciously set fire to, or burn, or cause to be burned, any barrack or stack of hay, wheat, rye, oats, barley, flax, hemp or fodder, or grain of any kind; or any corn crib, or place wherein corn may be deposited; or any fence, boards, plank, scantling, rails, tan bark or timber, the property of another; every person so offending shall, upon conviction thereof, be fined in any sum not more than five hundred nor less than ten dollars, and be imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days, or both, at the discretion of the court; and shall be answerable to the party injured in double damages.

SEC. 70. That if any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, prairies, or other grounds, within this Territory, other than his own; or shall intentionally permit the fire to pass from his own prairie or grounds, to the injury of any other person or persons; every person so offending shall, on conviction thereof, for every such offence, be fined in a sum not exceeding fifty dollars, at the discretion of the court, and stand committed until the sentence of the court is complied with; and shall be liable to an action of the party injured, for the damages which he, she, or they, may have sustained in consequence of said fire.

SEC. 71. That if any person shall wilfully and maliciously kill or destroy any horse, mare, foal, filly, mule or ass, sheep, goat, cow, ox, steer, bull or heifer, or swine, the property of another; such person shall, upon conviction thereof, be fined in any sum not more than one hundred nor less than five dollars, and imprisoned in the cell or dungeon of the jail of the county, not exceeding twenty days, at the discretion of the court; and shall moreover be liable to the owner of the property killed or destroyed in double the value thereof: *Provided*, That nothing in this section shall be construed to extend to any person who should kill any of the beforementioned animals trespassing on his or her own inclosure.

SEC. 72. That if any person shall wilfully and maliciously cut down, saw, bark, or otherwise kill or destroy any fruit, or other tree or trees, standing or growing in any nursery garden, yard, or orchard, the property of another; every person so offending shall, upon conviction thereof, be fined in any sum not more than five hundred nor less than five dollars; and the owner of the fruit or other tree or trees, thus killed or destroyed, shall recover not less than double the value of the same from the person or persons killing or destroying said fruit or other tree or trees.

SEC. 73. That if any person shall wantonly, wilfully, or maliciously, cut down, injure, or destroy any living or ornamental tree or trees, either planted or preserved as such, standing or growing in any common or public grounds, or on any street, alley, sidewalk, avenue, or promenade; every person so offending shall, on conviction thereof, be fined in any sum not more than one hundred nor less than five dollars; and shall, moreover, be liable to the action of the party injured in double damages.

SEC. 74. That all prosecution under the provisions of this act shall be by indictment, before the District Court, in the county where the offence shall have been committed, except in cases otherwise provided for by this act; and all persons imprisoned under the same, shall be imprisoned in the jail of the proper county: *Provided*, That if there should be no jail in the county in which the offence may have been committed, then such person or persons may be taken to, and confined in, the jail of any adjoining county.

SEC. 75. That all fines and forfeitures incurred under this act, shall be paid into the county treasury where the crime was committed.

SEC. 76. That no bill of indictment for any offences specified in the fifty last preceding sections of this act, shall be found a true bill by any grand jury, unless the name of the prosecutor be endorsed thereon; except such bill be found upon testimony, sworn and sent to the grand jury, by order of the court, at the request of the prosecuting attorney or the foreman of the grand jury; in which case the fact that the bill was found upon testimony sworn, and sent to the grand jury by order of the court, shall be endorsed on the bill, instead of endorsing the name of the prosecutor.

SEC. 77. That in all cases when the prosecutor's name is endorsed, and the bill found a true bill by the grand jury, and upon trial the defendant is acquitted, the prosecutor shall be liable for costs; and the court, at the term at which said acquittal shall take place, or at any subsequent term, shall render judgment against such prosecutor for such costs, unless the court shall be of opinion that there were reasonable grounds for instituting the prosecution. In all such trials the prosecutor may be admitted as a witness, and his credibility left to the jury.

SEC. 78. That all acts heretofore passed or in force in this Territory, for the punishment of crimes or misdemeanors, be, and the same are hereby repealed: *Provided*, That all crimes, misdemeanors and offences, committed prior to the taking effect of this act, shall be prosecuted and punished in the same manner as if this act had never been passed.

SEC. 79. This act to take effect and be in force, from and after the first day of September, A. D. 1851.

Passed the House of Representatives, February 6, 1851.
Passed the Council, February 6, 1851.

DEPOSITIONS.

An Act, *to provide for the taking of Depositions.*

Sec.

1. In what cases depositions may be taken and used in a civil action. Before whom such depositions may be taken, unless, &c.
2. When and how notice of taking to be given.
3. Form of oath of witnesses. How depositions to be subscribed and reduced to writing.
4. How depositions and notice to be sealed up, directed and transmitted, and opened.
5. May be certified and used in Supreme Court on appeal, &c. Cannot be used if witness can attend trial, and is resident of county.
6. Officers authorized to take depositions, may issue subpœnas for witnesses.
7. Attachments, fine, and remedy against a witness who neglects to obey subpœna.
8. Or who refuses to testify. But may demand his fees before testifying.

Sec.

9. Depositions taken pursuant to this act may be used before Justice, Mayor, Arbitrators, &c.
10. And on trial of appeal from their judgment if filed, &c, but subject to exceptions.
11. Authentication of depositions when used in judicial district where taken. When used out of the district where taken
12. Sheriffs and constables to serve process under this act—their fees as in other cases.
13. Officer neglecting to execute or return such process, may be amerced by District Court, as in other cases.
14. Fees of officers taking depositions and issuing process. May retain depositions until fees are paid.
15. Form of certificate to be used by the officer taking depositions.
16. Act repealed. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That when the testimony of any person shall be necessary in any civil cause or matter, pending in either the District Court or Supreme Court, sitting as a court of law or equity, and such person shall reside out of the county where such cause or matter is pending, or shall intend to leave such county before the time of trial, or shall be ancient or very infirm; the deposition of such person may be taken before any Justice or Judge of any court of the United States, or before any Chancellor, Master, Commissioner in chancery, Justice or Judge of any Supreme or Superior Court, Notary public, Mayor, or chief magistrate of any city or town corporate, Judge of any County Court or Court of Common Pleas, or Justice of the Peace of this Territory, or any of the United States, or of any district or territory thereof: *Provided*, Such officer shall not be counsel or attorney to either of the parties, or otherwise interested in the event of such cause.

Sec. 2. That prior to the taking of any such deposition, a written notice specifying the time and place of taking the same, shall be served on the adverse party, his agent or attorney of record, or left at his usual place of abode, so that he may be present and put interrogatories, if he or his agent or attorney shall think proper; which notice shall be served as aforesaid, so as to allow the adverse party time to attend after the service of such notice, by travelling at the rate of twenty miles per day, Sundays exclusive.

SEC. 3. That any person required to depose as aforesaid, shall be sworn or affirmed by the Justice, Judge, Notary public, or other officer, before whom such deposition may be taken, to testify the truth, the whole truth, and nothing but the truth; and shall subscribe the testimony, by him or her given, after the same shall be reduced to writing, by the officer taking the deposition, or by the witness, or some other disinterested person, in his or her presence.

SEC. 4. That the deposition so taken as aforesaid, shall be delivered by the officer taking the same, into the office of the clerk of the court, where the cause or matter may be pending, in which such deposition was taken; or shall, together with a copy of the notice of the adverse party, be by such officer sealed up, directed, and transmitted to the clerk of such court, there to remain under seal until opened, according to the rules prescribed by such court for that purpose.

SEC. 5. That all depositions taken as aforesaid, in any cause or matter depending in the District Court, sitting as a court of law or equity, shall be admitted and read in evidence on the hearing of the same cause or matter, when removed into the Supreme Court; and shall be, by the clerk of the District Court, certified and sent up with such cause or matter: *Provided*, That before the deposition of any aged, infirm or absent, or going witness, resident of the county, shall be admitted in evidence in either of the said courts, when sitting as a court of law, such court shall be satisfied that the personal attendance of such witness could not be obtained at the trial.

SEC. 6. That each and every judicial or other officer, residing in this Territory, and who may be authorized, as aforesaid, to take depositions within the same, shall have power, at the instance of any person who may be desirous of taking the deposition of any witness, relating to any civil action, suit, bill, petition, or other judicial matter or proceeding pending in any court, or before any referees or arbitrators of this Territory, or any other Territory, State, district or country, to cause such witness, by process of subpœna, to appear before him, on reasonable notice, at a certain time and place therein specified.

SEC. 7. That if any person who shall have been subpœnaed to appear as aforesaid, shall neglect or refuse to attend accordingly, not having a reasonable excuse for such neglect or refusal, the officer issuing such subpœna is hereby authorized and empowered to compel such person, by attachment, to be brought before him; and for want of a reasonable excuse, as aforesaid, to fine such person in any sum not exceeding fifty dollars, to and for the use of the Common School Fund of this Territory, as aforesaid, with costs; and such witness shall, moreover, be liable to the action of the party injured, for all damages he may have sustained, by reason of the non-attendance of such witness.

SEC. 8. That if any person not incompetent to testify in the action, cause, or matter pending as aforesaid, nor otherwise protected by law from testifying therein, and having appeared as required, shall nevertheless refuse to testify; the officer issuing such subpœna shall fine every such person in any sum not exceeding fifty dollars, nor less than five dollars, to and for the use of the Common School Fund of this Territory, or commit him to the jail of the county, there to remain until he shall submit to testify: *Provided*, That before any person subpœnaed as aforesaid shall be compelled to testify, he shall be paid, if he demand them, his lawful fees for attendance.

Sec. 9. That depositions taken pursuant to this act, shall be admitted in evidence on the trial of any civil action, cause or matter, pending before Justices of the Peace, or before any Mayor, or other judicial officer of a city or town corporate, or before any arbitrators, or referees; and such deposition shall be delivered or sealed up, addressed, and transmitted by the officer taking the same, to such Justice, Mayor, or other judicial officer, arbitrator, or referee.

Sec. 10. That such depositions having been taken and admitted in evidence, in any such inferior courts, as aforesaid, may on appeal therefrom be read in evidence, on the trial of the same action, cause, or other matter, in the court to which such appeal may be taken, subject however to all such legal exceptions as may be taken thereto: *Provided*, That such depositions shall be filed with the clerk of the court to which such appeal may be taken, on or before the second day of the term of the said court, next succeeding the time of taking such appeal.

Sec. 11. That depositions taken in pursuance of this act, by any judicial or other officer of this Territory or elsewhere, having a seal of office, authorized to take the same, shall be admitted in evidence before any court, referees, or arbitrators, sitting in any county within this Territory, upon the certificate and signature of such officer, with his seal of office thereunto annexed, and no other or further act of authentication thereof shall hereafter be required; but if such depositions were not taken by a judicial or other officer, having a seal of office as aforesaid, they shall be further authenticated, either by parol proof adduced in open court, or by annexation thereto of the official certificate and seal of any Secretary or other officer of State or Territory, keeping the great seal of State or Territory, or of the clerk of the court of any city, county, circuit, district, State, territory, province, or other division that the judicial or other officer, before or by whom such depositions were taken, was at the time of taking the same, an officer within the meaning of this act: *Provided*, That any deposition may be read in the judicial district in which it was taken, when taken by an officer authorized to use a seal, or not, without further authentication.

Sec. 12. That it shall be the duty of any sheriff or constable to whom any subpœna or writ of attachment may be directed under the provisions of this act, to execute the same according to the command thereof; for which service, such officer shall have the same fees as are, or may be allowed by law for like services in other cases.

SEC. 13. That if any such officer shall neglect or refuse to execute and return any subpœna or attachment, directed and delivered to him as aforesaid, he may be amerced by the District Court of the proper county, to and for the use of the party injured thereby, in the same manner and to the same amount, that such officer could or might be amerced for neglecting or refusing to execute and return similar process in other cases.

SEC. 14. That each and every master, commissioner in chancery, judicial or other officer, residing in this Territory, and who is authorized by this act to take depositions, shall be entitled to demand and receive for taking the same, the following fees: namely, for swearing each witness, ten cents; for each subpœna or writ of attachment, fifty cents; and for each hundred words contained in any such deposition and certificate, the sum of twenty-five cents; and the master, commissioner, judicial or other officer taking such deposition, may retain the same in his possession until such fee shall be paid.

SEC. 15. That depositions taken within this Territory shall be certified by the officer taking the same, as nearly in the form following as the nature of the case will admit: namely, "I, A. B. (Judge, Justice of the Peace, Master, Commissioner in Chancery, or other officer, stating the official character of the officer according to the fact), do hereby certify that C. D. (naming each witness examined) was by me sworn or affirmed to testify the truth, the whole truth, and nothing but the truth; and that the deposition by him subscribed, was reduced to writing by (naming the person who did the same), and taken at the time and place in the notice specified. Signed, A. B."

SEC. 16. That an act entitled "An Act regulating the mode of taking depositions; and to provide for the perpetuation of testimony," passed at the session of the Legislative Assembly of Oregon Territory, 1849, be, and the same is hereby repealed. This act to take effect and be in force, from and after the first day of June next.

Passed the House of Representatives, December 20th, 1850.
Passed the Council, January 3rd, 1851.

DISTRICT JUDGES.

AN ACT, *authorizing any of the district Judges of the Territory of Oregon to hold special terms of the District Courts in any of the counties in said Territory.*

SEC.

1. Any one of the district Judges authorized to hold a special term in any county in the Territory, for the trial of any crime amounting to a felony.
2. Sheriff to notify Judge, Judge to appoint a day. Accused to have notice. Clerk to issue venire for grand and petit jury.
3. Trial to be conducted, &c.
4. Act to apply to persons now in custody as well as hereafter. County to pay Judge holding Court.
5. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That it shall be lawful, and any one of the district Judges of the Territory of Oregon, are hereby authorized to hold a special term of the District Court in any of the counties of this Territory, for the purpose of trying any person or persons who may be charged with a felony.

SEC. 2. It shall be the duty of the sheriff of any county in this Territory, when any person or persons shall be committed to the jail of said county, charged with a felony, to forthwith notify any one of the district Judges of such commitment; and the said Judge is authorized to appoint a day, when he will hold said special term for the trial of said accused, giving to said accused at least ten days' notice of the day when said special term will commence; and whenever said district Judge shall appoint a time to hold any special term, he shall notify the clerk of the District Court of the county when said special term is to be held, and cause said clerk to issue a venire, to be directed to the sheriff of said county, requiring said sheriff to summon at least twenty-four competent jurors as grand jurors; and it shall be the duty of the clerk to issue a venire for a petit jury, and said clerk shall issue all process required on the part of the prosecution, as well as the defence of said accused.

SEC. 3. The accused when about to be put upon his trial, or after the trial has commenced, at any special term authorized by this act, shall have all the privileges and rights, continuances and challenges that he would be entitled to, or that is secured to him by any law at a regular term of said court, and the said Judge and all other officers of said court shall be governed by the same laws, as at a regular term.

SEC. 4. This act is to be so construed as to apply to persons who may now be accused of a felony, and in custody, as to those who may be hereafter accused; and the county in which said accused shall be indicted, shall pay said Judge five dollars per day in travelling to and from said court, and during the time said court shall be in session, and travelling expenses.

SEC. 5. This act to take effect and be in force from and after its passage.

Passed the House of Representatives, February 6th, 1851.
Passed the Council, February 7th, 1851.

ELECTIONS.

AN ACT, *to provide for, and regulate General Elections.* (162)

Sec.
1. Time of General Election.
2. Appointment of judges, clerks of election, notices of appointment, &c.
3. Three notices for each precinct to be delivered to sheriff. Forms of same, poll books.
4. Notices to be posted up by sheriff.
5. Vacancy in office of judges, how filled.
6. Oaths to be taken by judges.
7. By whom administered.
8. Opening of the polls; proclamation of the same.
9. Manner of voting.
10. Judge receiving the ticket to proclaim the name of elector, &c.
11. Place of voting, and punishment for voting more than once.
12. Voters, qualification of. Fine for voting without the requisite qualifications.
13. Constables to attend at elections for the preservation of order.
14. Examination of poll books, and certificates of election. Disposition of poll books, and punishment for neglect.
15. Opening of returns, abstracts, certificates of election. The compensation of judges, &c.

Sec.
16. Decision to be by lot, when two or more have an equal number of votes for the same office.
17. Returns to be made by the secretary. Votes for delegate, how canvassed, &c.
18. Messenger employed to procure returns.
19. Resignation, vacancies, &c., how filled.
20. Proceedings in case of contested elections for Legislative Assembly.
21. Proceedings in case of contested election for coroner, county commissioners, &c.
22. If two or more counties united, votes to be counted in senior county.
23. Fine and punishment of judges for illegal and improper discharge of duties of their office.
24. Vacancy in the office of member of Council or House of Representatives.
25. Compensation of judges.
26. When county or district divided before election to fill vacancy.
27. When and where returns to be made in cases as above.
28. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be an election in each organized county in this Territory on the first Monday in June in each year, to be styled the General Election.

SEC. 2. That the county commissoners shall, respectively, at their annual session in April preceding the general election, where the counties are not organized into townships, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election, at each election precinct, and the clerk of said Board of commissioners shall make out and deliver to the sheriff of the county immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the sheriff, within twenty days after receipt of said notice, to serve said notice upon each of the said judges of election. But in all organized townships, the trustees of said township shall act as judges of all elections held under the provisions of this act, and the township clerk shall act as one of the clerks of said election, taking to his assistance some suitable person, to be approved of by said trustees. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges of election shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of elections; and the county commissioners shall, from time to time, fill all vacancies which may take place in the office of judges of election, at any election precinct within their respective counties.

Sec. 3. That the clerks of the several Boards of county commissioners shall, at least forty days previous to any general election, make out and deliver to the sheriffs of their respective counties, three written notices thereof for each election precinct, said notices to be as nearly as circumstances will admit, as follows, viz.:

"Notice is hereby given, that on the —— Monday of ———, the —— day of ——— next, at the house of ———, in the township, (or, district) of ———, in the county of ———, an election will be held for Territorial, county, and township (or, district) officers (naming the offices to be filled, as the case may be), which election will be opened at nine o'clock in the morning, and continue open until six o'clock in the afternoon of the same day. Dated at ———, this ——— day of ———, A. D. (as the case may be). Signed, A. B., clerk of the Board of County Commissioners." And it also shall be the duty of the clerks of the several Boards of county commissioners to furnish one of the judges of every election precinct in the county, with two poll books, and a copy of the several duties to be performed by the judges and clerks.

Sec. 4. And the sheriff aforesaid, to whom such notice shall be delivered as aforesaid, shall post up in three of the most public places in each township or district, the notices referring to such township or district, at least thirty days before the time of holding any general election, and at least ten days before the holding of any special election; and in case where townships or districts may not be set off by law as election precincts, said notices shall be posted up by the sheriff as follows:—one at the house where the election is authorized to be held, and the other two at two of the most public and suitable places in that vicinity or settlement.

Sec. 5. If any person appointed or elected to act as judge of the election as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by any Justice of the Peace residing within the county, township, or district, to be nominated by the other judge or judges of the election; and if there be no Justice present to act as judge, the other judge or judges of the election shall nominate one or more capable and discreet electors, residing within the county, township, or district, to fill such vacancy, or vacancies; and if there be no judge of the election present to fill such vacancy, or vacancies, by nomination, then such vacancy or vacancies shall be filled by the votes of such qualified electors, residing within the county, township, or district, as may then be present at the place of election; and the Justice or Justices, person or persons, so elected or nominated to fill such vacancy or vacancies, shall be and are hereby vested with the same power as if appointed by the Board of county commissioners, or elected as aforesaid.

SEC. 6. Previous to the votes being taken, the judges and clerks of the election shall severally take an oath or affirmation in the following form, to wit: I, A. B., do solemnly swear (or, affirm, as the case may be) that I will perform the duties of judge (or, clerk) of the election, according to law, and to the best of my abilities. I will studiously endeavor to prevent fraud, deceit, or abuse, in conducting the same.

SEC. 7. In case there shall be no Justice of the Peace or Judge present, at the opening of the election, or in case such Judge or Justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath or affirmation to each other, and to the clerks of the election; and the person administering such oaths or affirmations shall cause an entry thereof to be made, and subscribed by him, and prefixed to the poll books.

SEC. 8. That in all elections to be held under this act, the polls shall be opened at the hour of nine o'clock in the morning, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; but may be kept open until nine, if the judges think it necessary: *Provided, however*, That if no judge shall attend at the hour of nine o'clock in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election, as hereinbefore prescribed, the election may in that case commence at any hour before the time for closing the polls shall arrive, as the case may require. Upon opening the polls one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls, proclamation shall be made in like manner, that the polls will be closed in half an hour.

SEC. 9. That each elector shall, in full view, deliver to one of the judges of the election a single ballot, or piece of paper, on which shall be written or printed, the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill.

SEC. 10. That the judges to whom any ticket shall be delivered shall, upon the receipt thereof, pronounce with an audible voice the name of the elector: and if no objection be made to him, and the judges be satisfied that the elector is legally entitled agreeably to the laws of this Territory, to vote at the election, he shall immediately put the ticket in the box, without inspecting the names written thereon; and the clerks of the election shall enter the name of the elector and number in the poll book.

SEC. 11. It shall be lawful for any elector to vote for delegate to Congress, at any place of holding an election within this Territory; for members of the Council and House of Representatives, at any place of holding an election in the county or district in which he may reside; for coroner, county commissioner, or county officers, at any place of holding an election in the county in which he resides; but for constables and other township officers, he shall not vote out of the township or district in which he resides: and if any elector shall vote more than once, at any election held under the authority of this act, for the same officer, he shall be fined in the sum of one hundred dollars, to be recovered by indictment, before any court of competent jurisdiction, and the whole of such fine shall be appropriated to the use of the county in which the offence may have been committed.

SEC. 12. No person shall be entitled to vote at any election in this Territory, who has not attained the age of twenty-one years, who is not a free white male citizen, or foreigner duly naturalized, according to the acts of Congress on that subject, and who has not resided in this Territory for at least six months, and thirty days in the county where he offers to vote, immediately previous to his application to vote: *Provided*, That all foreigners who have resided within this Territory for five years previous to the passage of this act, and who have filed their declaration of intention to become citizens of the United States, prior to the first day of January, A. D. 1850, shall be entitled to the rights and privileges of citizens; and when any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector; or if his vote shall be challenged by any elector, who has previously given his vote at such election, the judges of such election shall tender to such person an oath or affirmation in the following form, to wit: "I, A. B., do solemnly swear (or, affirm, as the case may be), that I am a resident of ———, in the Territory of Oregon, a citizen of the United States; that my place of residence has been in this Territory for the period of six months, and in the county thirty days immediately preceding this election; that I have, to the best of my knowledge and belief, attained the age of twenty-one years, and that I have not voted at this election." And if either of said judges, or any other person, who shall have voted at such election, shall still doubt the legality of such vote, the judges may propound such interrogatories to the person so offering to vote, touching his competency, as they may deem proper; and if the person so offering to vote shall take such oath or affirmation, and make full and satisfactory answers to such interrogatories, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges, that said oath or affirmation is false, and if such person refuse to take such oath or affirmation, or make full and satisfactory answers to such interrogatories, his vote shall be rejected; and if any person shall take the said oath or affirmation, knowing it to be false, he shall be deemed guilty of a wilful and corrupt perjury, and shall on conviction suffer such punishment as is now, or shall hereafter be prescribed by law, for persons guilty of perjury. And if any person shall vote at an election who is not a qualified voter, knowing his incompetency, he shall forfeit and pay any sum not exceeding fifty dollars, nor less than twenty-five, to be recovered in the same manner as other penalties under this act are.

SEC. 13. For the preservation of order, as well as the security of the judges and clerks of the election from insult and abuse, it shall be the duty of the constable or constables, residing within the township or district, who shall be designated for the purpose by the judges of the election, to attend at all the elections within such townships or district; and should no constable attend at such election, the judges are hereby authorized and empowered to appoint one or more special constables, to assist in preserving order during the election; and any person who shall conduct in a disorderly or riotous manner, at such election, and persist in such conduct after being warned of the consequences, may upon the order of said judges, be taken into custody and removed from the neighborhood of said election, during the time the polls may remain open; such person shall also be liable for any crime or misdemeanor committed by him during such disturbance, in the manner and to the extent prescribed by law.

SEC. 14. The votes shall be publicly examined and counted immediately after the close of the polls, and the clerks shall set down in their poll books, the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive; and that whenever the judges of said election shall, upon canvassing the votes, find two or more votes folded together, the said judges shall in that case reject all votes thus folded, the number being expressed in words at full length: such entry to be made as nearly as circumstances will admit, in the following form, to wit:

At an election held at the house of ———, in ——— township (or, district), in the county of ———, and Territory of Oregon, on the —— day of ————, A. D. ——, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit: A. B. had ——— votes for Delegate to Congress; C. D. had ——— votes for Member of the Council; E. F. had ——— votes for Member of the House of Representatives; G. H. had ——— votes for Coroner; J. K. had ——— votes for County Commissioner; and in the same manner for any other officer voted for. Certified by us.

Signed A. B. }
C. D. } Judges of Election.
E. F. }
Attest G. H. }
I. K. } Clerks of Election.

The judges of election shall then inclose and seal one of the poll books under cover, directed to the clerk of the Board of county commissioners of the county in which such election is held, and the packet thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, and delivered to the said clerk of the Board of county commissioners, at his office, within ten days from the closing of the polls; and the other poll books shall be deposited with one of the judges of election, to be determined as aforesaid; and the said poll book shall be subject to the inspection of any elector who may wish to examine it: and if any judge or clerk of election, at which he shall have served as judge or clerk, having been appointed to carry the poll book of such election to the Board of county commissioners, shall fail or neglect to deliver such poll book to said clerk, within the time prescribed by law, safe with the seal unbroken, he shall, for every offence, forfeit and pay the sum of five hundred dollars for the use of the county, to be recovered in the name of the commissioners of the county by an action of debt, in the District Court.

Sec. 15. On the tenth day after the close of the election, or sooner if all the returns be received, the clerk of the Board of county commissioners, taking to his assistance two of the county commisioners, or two Justices of the Peace of his county, shall proceed to open said returns, and make abstracts of the votes in the following manner: The abstract of the votes for Congress shall be on one sheet; the abstract of the votes for members of the Legislative Assembly shall be on one sheet; the abstract of the votes for county officers shall be on another sheet; and it shall be the duty of the said clerk of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes for the Legislative Assembly and county officers respectively, and to deliver such certificate to the person entitled to it, on his making application for that purpose to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons for the Council and House of Representatives, the clerk of the Board of county commisioners shall give notice thereof to the sheriff of the county, who shall advertise another election, giving at least ten days' notice; and it shall be the duty of the clerk of the Board of county commissioners of each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein their compensation, to which the judges and clerks of each election may be entitled for their services, and lay the same before the Board of commissioners at their next session; and the said Board shall order their compensation aforesaid to be paid out of the county treasury.

SEC. 16. If the requisite number of county officers shall not be elected, by reason of any two or more persons having an equal, and the highest number of votes for one and the same office; the clerk whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot, which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make out and deliver to the person declared duly elected, a certificate of his election as hereinbefore provided.

SEC. 17. The clerk of the Board of county commissioners, immediately after making out abstracts of the votes given in his county, shall make a copy of each abstract, and transmit it by mail to the secretary of the Territory; and it shall be the duty of the secretary, with the marshal of the Territory, or his deputy, in the presence of the Governor, to proceed within thirty days after the election, and sooner if all the returns be received, to canvass the votes given for delegate to Congress, and the Governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person: in case there shall be no choice, by reason of any two or more persons having an equal number of votes, the Governor shall order a new election.

SEC. 18. If the returns of the election of any county in this Territory shall not be received at the office of the secretary of the Territory, within twenty days after the election, the said secretary shall forthwith send a messenger to the Board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of said county, the sum of twenty cents for each mile he shall necessarily travel, in going to and returning from the office of the said clerk.

SEC. 19. Any person who shall receive a certificate of his election as a member of the Council or House of Representatives of the Legislative Assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of his duties, or have taken the requisite oath of office; and when any vacancy shall happen to members of the Council or House of Representatives of the Legislative Assembly, by death, resignation, or otherwise, the Governor shall issue a writ of election directed to the sheriff of the county or district, in which such vacancy shall happen, commanding him to notify the several judges of election in his county or district, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the Governor: *Provided*, That if there be no session of the General Assembly between the happening of such vacancy, and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy shall happen in the office of sheriff, either by death, resignation, or otherwise, the clerk of the Board of county commissioners in which such vacancy shall happen, shall immediately notify the Governor, that he may appoint some suitable person to fill such vacancy; and when any vacancy shall happen in the office of delegate to Congress, from this Territory, it shall be the duty of the Governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

SEC. 20. If any candidate of the proper county or district shall desire to contest the validity of any election, or the right of any person declared to be duly elected, to hold his seat in the Council or House of Representatives of the Legislative Assembly; such candidate shall give notice of his intention in writing, to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty-five days after the day of election, expressing the points on which the same will be contested, the name of one of the Justices of the Peace who shall attend at the taking of the depositions, the place where, and the time when the said depositions will be taken, which time so fixed upon for the taking of the depositions, shall not exceed forty days from the day of election; and the party whose election is contested shall have a right to select another Justice of the Peace, and the two Justices so selected shall make choice of a third Justice; and if they fail to agree on a third Justice to act with them, they shall proceed to select by lot a Justice of the Peace, who shall preside with them at the taking of such testimony; and the three Justices thus selected, or a majority of them, shall have power, and they are hereby authorized to issue subpœnas to all persons whose testimony may be required by either of the parties, commanding such persons to appear, and give testimony at the time and place therein mentioned, under the penalty of fifty dollars, to be levied on each and every delinquent, who has been duly served with process: *Provided*, *however*, That should the person whose election is contested fail to nominate a Justice, as aforesaid, it shall be the duty of the Justice nominated by the person contesting the election, as aforesaid, to select a Justice of the Peace, who shall proceed as above stated; and if any witness, or witnesses summoned, as aforesaid, shall fail or refuse to appear at the time specified in said notice, it shall be lawful for said Justices, or either of them, to issue an attachment against such witness or witnesses; and the testimony of him, her, or them, so failing or refusing to appear, may be taken at any time before the next session of the Legislature thereafter, by giving five days' notice to the party whose election is so contested, and the party contesting the same; and if any Justice of the Peace, selected as aforesaid, to attend at the taking of the depositions, shall, without reasonable excuse, fail or refuse to attend, at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt in any court having cognizance thereof, to be paid into the county treasury; and the said Justices, when met, shall hear, and certify under seal all testimony relative to the said contested election, to the president of the Council, or speaker of the House of Representatives, as the case may require; and no testimony shall be heard by the said Justice on the part of the person contesting the election, which does not relate to the points specified in the notice; a copy of said notice shall be attested, either before or at the trial, by the person who served or delivered the same, or its service proved, and a certificate of such proof endorsed thereon by said Justice, and the notice transmitted with the other documents to the president of the Council, or speaker of the House of Representatives, to whichever body the person whose election is contested belongs.

SEC. 21. When any candidate shall desire to contest the validity of any election, or the right of any person declared to be duly elected, to hold and exercise the office of coroner, or county commissioner, or any county officer; such candidate, so contesting the election as aforesaid, shall proceed in all respects in the manner prescribed in the foregoing section; except that said Justices, before named, after hearing and examining all testimony produced as provided in the foregoing section, and having summed up the same, shall decide which of the said candidates shall, in their opinion, have been duly elected; and said decision shall be final; and certify the same to the clerk of the Board of county commissioners of the proper county, who shall thereupon make out and deliver to the successful party, a certificate of his election; and all necessary costs accruing in any contested election, shall be paid by the unsuccessful party, to be recovered by action of debt, as in other cases.

SEC. 22. That when two or more counties are united in one council or representative district, the clerk of the Board of county commissioners, of the county or counties last established, shall, within twelve days after the election, attend at the office of the clerk of the Board of county commissioners, of the senior county, and there in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties composing such council or representative district; and said clerk shall immediately make out a certificate of the election of the person or persons having the highest number of votes in such counties, for members of the Council or House of Representatives of the Legislative Assembly; which certificate shall be delivered to the person entitled to it, on his application by himself or agent, to the clerk of the Board of county commissioners, of the senior county at his office.

SEC. 23. If any judge of the election, or clerk, or any other officer or person, in any manner concerned in conducting the election, shall wilfully neglect, improperly delay or refuse to perform any of the duties required by this act, after having undertaken to perform such duties, he shall forfeit and pay to the county the sum of fifty dollars; and if such judge of election, clerk, or other officer or person, in anywise concerned in conducting the election, shall knowingly admit any person to vote, not qualified according to law; or shall knowingly receive and count more than one vote from one person, at the same election, for one office; or shall be guilty of fraud, corruption, or partiality, in any matter or things relating to said election; each and every person so offending, shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any Court of Record in this Territory, in the name of the Board of county commissioners of the proper county, for the use of their county, in an action of debt with costs of suit, or at the suit of any person who may sue for the same, the amount recovered to be paid into the county treasury; and every such person so offending as aforesaid, shall moreover, on conviction, be rendered incapable of holding any office within this Territory for the term of ten years thereafter. If any judge of election shall wilfully refuse to receive the vote of any elector, who has a right, according to the laws of this Territory, to vote at the polls where such judge presides; and who, being challenged, shall offer to take the oath prescribed in such cases by this act; such judge of election so refusing, shall be liable to the penalty of fifty dollars, to be recovered by an action of debt, in the name of the Territory, or by any person who may sue for the same, the amount recovered to be paid into the county treasury: *Provided*, That nothing in this act shall be so construed, as to prevent the judges from refusing to receive the vote of any person, when it shall be proved to the satisfaction of a majority of them, that, in taking the said oath, he shall have sworn falsely; and if any judge of election shall order to be received the vote of any person, who, being challenged, shall not take the oath or affirmation prescribed by law, such judge of election, so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt in the name of the Territory, or of any person suing therefor, the amount to be paid into the county treasury.

SEC. 24. When any vacancy shall happen in the office of members of the Council or House of Representatives of the Legislative Assembly, by death, resignation, or otherwise, it shall be the duty of the clerk of the Board of county commissioners of the county, if one county only compose the council or representative district, as soon as he shall be informed thereof, to notify the Governor of such vacancy; and if there be more than one county comprised within the limits of such council or representative district, it shall be the duty of the clerk of the Board of county commissioners of the senior county in such district, so to notify the Governor, and the Governor, immediately upon his receiving such notification, shall proceed in the same manner as is prescribed for other cases, in the nineteenth section of this act.

SEC. 25. There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, as a compensation for their services, two dollars per day; and the person conveying the polls from the place of the election, to the clerk's office, the sum of twenty cents per mile, for going and returning.

SEC. 26. If a vacancy should occur in the Council or House of Representatives of this Territory, from any cause, and if the county or counties composing the district in which the vacancy may have occurred, should have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at any election who does not at the time reside within the limits of the original county or district, in which such vacancy may have occurred; *Provided*, That nothing herein contained shall be so construed, as to permit any person to vote, so residing within the said limits, who has not the other qualifications of a voter.

SEC. 27. In cases of elections to fill vacancies, as provided for in the preceding section, the returns shall be made by the clerks of the Board of county commissioners, of the different counties, within twelve days, to the office of the clerk of the Board of county commissioners of the original county composing the district, and certificates of election shall be made out and signed by the clerk of the Board of county commissioners of the different counties in which such election may have been held.

SEC. 28. This act to take effect and be in force from and after its passage.

Passed the House of Representatives, January 27th, 1851.
Passed the Council, February 3d, 1851.

EXECUTORS AND ADMINISTRATORS.

AN ACT, *respecting Executors and Administrators.*

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1. Probate Courts, to grant letters When clerk may grant, &c.
2. Court to confirm letters granted in vacation.
3. In what county letters granted.
4. All proceedings to be had in the county where letters granted.
5. Who disqualified from being executor or administrator
6. Who entitled to administer—in what order.

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7. Application not made within sixty days, court may grant, &c.
8. Court may issue citation to person entitled to administration—effect of.
9. After probate, letters testamentary—to whom granted.
10. Where two or more executors named in the will—none authorized to act except such as give bond.
11. When will contested, or executor be

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a minor, or absent, temporary administrator appointed.
12. Oath of applicant for letters of administration.
13 The same, in case of administrator *de bonis non*, &c.
14. The same, in case of administrator with the will annexed, or executor.
15. Bond of administrator, securities, &c.
16. Condition of said bond.
17. Bond of executors, administrator with the will annexed, or *de bonis non*, or during contest, &c.
18. Who disqualified from being security on such bonds.
19. Court may examine securities as to their solvency.
20. Clerk to record bonds, file originals, &c.
21. Court to approve bonds taken in vacation, clerk to record and endorse said approval.
22. If bond rejected, further security to be given—effect of failure.
23. Rejection not to vitiate first bond.
24 Letters testamentary and of administration to be recorded, when, &c
25. Penalty for neglect to record.
26. When copies evidence.
27. Letters testamentary—form of.
28. Letters of administration—form of.
29. Letters *de bonis non*—with the will annexed—during minority or absence, &c—form of.
30. Effect of discovery of a will after letters granted—proceedings in such case.
31. If will afterwards set aside—effect of.
32 Marriage, a revocation of letters.
33. For what causes, and in what manner Probate Court may revoke letters.
34, 35, 36. For what causes, and in what manner court may order new bond to be given by executor or administrator.
37. Effect of said bond as to former securities.
38. Effect of failure to give said bond.
39. Same subject.
40. Executor or administrator may resign—in what manner.
41. Same subject
42 Surviving executor or administrator—power and duties of.
43. Death or resignation, &c., of all the executors or administrators. Effect of—proceedings, &c.
44, 45. Same subject.
46. Limitation of action against securities in such cases
47. Final settlement of executor or administrator. Effect of failure—may be attached.
48. To pay costs incurred in such cases.
49. Inventory of an estate where deceased was member of a partnership.

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50. When property to remain with surviving partner, to give bond.
51. Condition of said bond.
52. Said survivor considered as administrator. Power of court—remedies of parties, &c.
53. Effect of said survivor neglecting to give bond.
54. Same subject.
55 Surviving partner to exhibit partnership property on demand, if administration devolve upon administrator. Duties of survivor.
56. Penalty for neglect to comply with the preceding section.
57. When two or more executors appointed, court may take separate or joint bonds.
58. Incapacity of non-residents.

ARTICLE II.—*Of their duties respecting Money and Property.*

1. Executor or administrator to take into possession personal property, title of real estate, &c.
2. Inventory.
3. Affidavit to inventory.
4. Time of filing inventory.
5. Additional inventory—when to be made.
6. Witnesses to the inventory.
7. Compensation of said witnesses.
8. Penalty for opening papers, &c, without the presence of witnesses.
9. Persons embezzling property, &c.—remedy for.
10. Person refusing to answer interrogatories may be committed.
11. Person denying the right of the executor. Right of property to be tried by jury or court
12. Court may compel the delivery of goods by attachment
13. Personal estate to be appraised—when, and by whom.
14. Affidavit of appraisers.
15. Appraisement—how made.
16. When filed, and where.
17. Fees of appraisers.
18. Subsequent appraisement—how made.
19. Inventories and appraisement—effect of in evidence.
20. Notice of appointment—how published.
21. Additional notice, when no heirs.
22. Executors to collect all debts, &c.—defend all suits, &c.
23. Same subject.
24. When executor or administrator may be witness.
25, 26. For what wrongs executor or administrator may sue.
27. Debts due by administrator. Assets in his hands.

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28. Appointment as executor not to discharge debt. Assets in his hands.
29. What widow may keep, in addition to dower
30. Widow may take additional property. Amount of, and receipts for.
31. When widow to apply for said property. To be deducted from dower in personal estate.
32. If property sold, when court shall order the money to be paid her.
33. When and how executor to sell perishable property.
34. If not sufficient to satisfy debts, to sell other personal estate. When specific legacies may be sold.
35. Executors and administrators may assign notes, &c., in payment of debts, legacies, &c.
36. Notice of sale—how given.
37. If testator direct his estate not to be sold, to be reserved, unless, &c
38. In what time personal estate to be sold. When no legal representatives
39. When personal estate may be sold at private sale. How made.
40. When clerk of sale employed—qualifications of.
41. Duties of said clerk. Affidavit, &c.
42. When and by whom sale bill filed. Effect of in evidence.
43. When real estate may be leased, and how.
44. Repairs to out-buildings and houses—when made.
45. Court to examine papers filed in vacation.
46. When executor or administrator may procure indispensable labor done, without order of court.
47. When court may order additional work done.
48. When executor or administrator accountable for interest
49. Same subject
50. Money on hand—to render an account of on oath—when.
51. When court may order money of the estate to be loaned.
52. Court may make orders, &c., for sale and distribution.
53. Who to give receipts, &c, for debts due the estate.
54. When personal property bound by lien of execution. How inventoried, appraised, and sold.
55. How proceeds of such sale applied. Priority of lien, &c
56 Limitation of the two preceding sections, as to widow's dower or preferred debts.
57. When court may order no more of the personal estate to be sold than will pay debts. Proviso as to security.

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58. In such cases, who unsold property to remain with, &c.
59. Judge of Probate may suspend the sale of property in vacation upon petition.
60. When court may order property sold.
61. Power of court over continuances.

ARTICLE III.—*Of their duties respecting the sale of Real Estate.*

1. Who may sell and convey real estate under a will.
2. When and by whom payments made upon real estate purchased by deceased, &c.
3. When court may order the interest of the deceased therein to be sold.
4. When court may order such real estate to be relinquished.
5 Same subject.
6. When court may order equity of redemption to be redeemed.
7. When court may order the interest of deceased therein to be sold.
8. Effect of deed in such cases.
9. If personal estate be insufficient to pay debts, petition to sell land authorized
10. Liens of judgment to be stated in petition.
11. And first satisfied, residue of proceeds to be assets
12, 13, 14. If several judgment liens exist, payment to be made by priority—remainder of proceeds assets.
15. Liens of even date, exceeding proceeds in amount, to be paid in proportion.
16, 17. If sale has been made upon junior judgment, the court may order a resale for the benefit of priors.
18. Such notice to be published as in other cases.
19. Purchaser to have the privilege of paying off prior judgment six months after notice to appear.
20. Purchaser failing to pay, to lose title under such purchase.
21. Petition of administrator or executor to sell land, to be accompanied by account of debts and inventory of real and personal estate.
22 Creditors may apply for sale of land on failure of executor or administrator to apply. Notice thereof to be given.
23. On being so notified, lists, accounts, and inventory to be filed, or executors or administrators may be attached.
24. Petition for sale, order, &c, how made and published
25. Proof, examination, &c.
26. Personal estate, how reserved, and real estate sold to pay debts.

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27, 28. Real estate to be appraised.
29. Notice of sale, how given.
30, 31. How sale to be made.
32. Report to be made.
33. If sale be not approved, court to order a new sale.
34. If sale be approved, deed ordered.
35. Force of deed.
36, 37, 38, 39, 40, 41. Executors' contracts, how enforced.
42. Jurisdiction of District Court.
43. Decree as in equity.
44, 45. Debts due executor or administrator, how sued and recovered.

Article IV.—*Of the allowance of demands against Estate.*

1. Order of payment.
2. Demands not exhibited in three years, barred, except as against certain persons under disability.
3, 4. Actions pending, to be legal claims from service of process.
5. Notice in writing, of claims and accounts to be served.
6. Returns of demands to be made to the court every year.
7. Demands to be exhibited by copy of judgment, &c.
8. Order of allowance to be entered.
9. Affidavit of claimant.
10. Additional proof required.
11. Agents may make affidavits. Executors and administrators not required to make such concerning matters prior to letters granted.
12, 13. Notice of claim, and presentment thereof to be served in writing, two days before court.
14, 15. Notice may be waived, and trial in a summary manner.
16. Depositions, how taken.
17. Demands under twenty dollars, and jury not required, court to decide.
18. For demands over twenty dollars, and jury required, trial summary.
19. Debts due executor or administrator, how sued.
20. Costs, how and by whom paid.
21. Clerk of Probate Court to keep abstracts of judgments and claims.
22. Demands allowed to be classified and paid accordingly.
23. To be endorsed by clerk.
24. Payments made according to class, and in proportion, &c.
25. In suits brought against estates within one year from date of letters, costs not recoverable.
26, 27. Notice of demands may be served on agents, or filed in court.
28. New hearing of demands allowed on affidavit.

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29. Commissioner appointed—his duties, &c.
30. Report, if objected to, revised by the court.
31. Creditors failing to present demands before commissioners, may have the same allowed by the court.
32. Compensation of commissioners allowed by court.

Article V.—*Of the settlement of their Accounts.*

1. Record of accounts and settlements required.
2. Accounts and vouchers to be exhibited to court each year, until settlement.
3. Docket and list of unsettled estates.
4. Clerk to post up lists of executors and administrators thirty days before term of settlement.
5, 6. Citation for settlement. How and when issued and served.
7, 8. Penalty for not settling.
9. Expenses of administration to be paid.
10. Legal proof of demands to be produced.
11. Funds to be apportioned at each settlement.
12. All debts to be paid of each class.
13. Execution against executor or administrator issued by clerk, on failure to comply with order.
14. If execution be unsatisfied, *scire facias* to issue against the security.
15. Judgment against security.
16, 17. Notice to creditors of final settlement to be published four weeks, and settlement conducted as annual settlements.
18. Credits to be given for paid and insolvent debts.

Article VI.—*Of the distribution of the Estate.*

1. Distribution not to be made, nor legacies paid, except specific perishable legacies, for one year.
2. Payments not to be made under three years, unless ordered by the court, and unless bond be given to refund, &c., widows excepted.
3 If money sufficient, distribution and payment of legacies ordered.
4. Personal property to be divided or sold.
5. Distributees to be notified ten days, non-residents eight weeks, by publication before order.
6. Order to distribute proceeds of sale.
7. Distributee's receipt for purchase allowed.

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8. Widows paid out of real estate sold, the same as if debts had been paid by sale of personal estate.
9. After distribution, debts to be apportioned.
10. Legatee or distributee failing to refund, compelled by judgment.
11. Order for support of minors.
12. Until dower be assigned, widow to have share of rents.
13. When widow to have all the estate.
14. After settlement, when funds to be loaned.
15, 16. If not claimed in one year, to be paid into Territorial Treasury, and receipts to be taken, &c.
17. How to be drawn from treasury.
18. Disposal of personal property unclaimed.
19, 20. Where decedent is a non-resident, how estate shall be disposed of.
21. Estates insolvent to be distributed in proportion to debts.
22, 23. Resident creditors to be paid, before transmission of funds abroad.
24. Non-resident creditors proving debts here, to be paid after citizens.
25, 26. Whole estate to be divided ratably, among all creditors, after three years.
27. Compensation of executors and administrators.

ARTICLE VII.—*Of Proceedings against Executors and Administrators, and Securities.*

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1, 2. Creditors may suggest waste.
3. If waste be found, execution to issue against the proper estate.
4. If fraud be found, double amount recovered.
5. Remedy on bond, or by action of waste.
6. Defence limited to faithful compliance with order.
7, 8. Proceeds of such judgment applied.
9. Power of Probate Courts in enforcing obedience.

ARTICLE VIII.—*Of Appeals.*

1. In what cases appeals allowed to District Court.
2. To be taken during term.
3. Affidavit required.
4. Bond and security to be given, except by executors and administrators.
5. Not to affect matters not appealed.
6. Transcript and papers to be transmitted.
7. Jurisdiction of District Court.
8. District Clerk to certify back to Probate Court.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the Probate Court of each county, (and the clerks thereof, in vacation, subject to the confirmation or rejection of the Probate Court,) shall grant letters testamentary and of administration.

SEC. 2. The clerk shall present to the Probate Court at the next succeeding term thereof, all such letters as may have been granted by him in vacation, and shall enter on the record the confirmation or rejection of such letters.

SEC. 3. Letters testamentary and of administration, shall be granted in the county in which the mansion-house or place of abode of the deceased is situated. If he had no mansion-house or place of abode at the time of his death, and be possessed of lands, letters shall be granted in the county in which the land or a part thereof lies. If the deceased had no mansion-house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or where the greater part of his estate may be. If he died out of the Territory, having no mansion-house, place of abode, or lands in this Territory, such letters may be granted in any county.

SEC. 4. All orders, settlements, trials, and other proceedings intrusted by this act to the Probate Court, shall be had or made in the county in which the letters testamentary or of administration were granted.

SEC. 5. No Justice or clerk of any Probate Court, in his own county, or his deputy, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator, nor shall the executor of an executor, in consequence thereof, be executor of the first testator.

SEC. 6. Letters of administration shall be granted, first, to the husband or wife, or to those who are entitled to distribution of the estate, or one or more of them, as the court, or clerk in vacation shall believe will best manage and improve the estate.

SEC. 7. If no such person apply for letters, within sixty days after the death of the deceased, letters may be granted to any person whom the court, or clerk in vacation shall consider most suitable.

SEC. 8. The Probate Court, or clerk thereof in vacation, on application of any person interested, may issue a citation to any person entitled to administration, calling on them to administer; and if they fail to take letters within thirty days after the service of the citation, or if the persons entitled to preference file their renunciation thereof in writing with the clerk of the Probate Court, letters of administration shall be granted to the person next entitled thereto.

SEC. 9. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will.

SEC. 10. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

SEC. 11. If the validity of a will be contested, or the executor be a minor, or absent from the Territory, letters of administration shall be granted during the time of such contests, minority, or absence, to some other person, who shall take charge of the property and administer the same according to law, under the direction of the court, and account for and pay and deliver all the money and property of the estate to the executors or regular administrator, when qualified to act.

SEC. 12. Every applicant for letters of administration, at the time of application, shall make an affidavit, stating to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased; that the deceased died without a will; that he will make a perfect inventory of, and faithfully administer all the estate of the deceased, and pay the debts as far as the assets will extend, and the law direct, and account for and pay all assets which shall come to his possession or knowledge.

SEC. 13. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the minority, or absence of an executor.

Sec. 14. Every administrator with the will annexed, and executor at the time letters are granted to him, shall make an affidavit, that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration.

Sec. 15. The Probate Court, or the clerk thereof in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities, resident in the county, to the Territory of Oregon, in such amount as by the court or clerk shall be deemed sufficient, not less than double the amount of the estate.

Sec. 16. The condition of such bond shall be as follows, to wit: "The condition of the above bond is, that if A. B., administrator of the estate of C. D., deceased, shall faithfully administer said estate, account for, pay and deliver all money and property of said estate, and perform all other things touching said administration, required by law, or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to be and remain in full force."

Sec. 17. A similar bond, with such variations as the case may require, shall be given by all executors and administrators with the will annexed, or of the goods remaining unadministered, and all administrators during the time of a contest about a will, or of the minority or absence of an executor.

Sec. 18. No Justice of the Probate Court, no sheriff, clerk of a court, or deputy of either, and no attorney-at-law, shall be taken as security in any bond required to be taken by this act.

Sec. 19. The Probate Court, or clerk in vacation, shall take special care to take as securities men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy themselves, they may take testimony, or examine on oath, the applicant or persons offered as his securities.

Sec. 20. The clerk of the Probate Court shall record in a well-bound book, kept for that purpose, all bonds given by executors and administrators, preserve the originals in regular files, and present all such as are taken in vacation to the Probate Court, at its next session.

Sec. 21. The Probate Court shall approve the bonds taken in vacation, and the clerk shall enter such approval or rejection on the record, and endorse a copy of such entry on the bond.

Sec. 22. If the bond be rejected, the court shall order the executor or administrator to give another bond, with sufficient security; and if he fail to give such bond within such time as the court shall direct, his letters shall thenceforth be deemed to be revoked.

Sec. 23. Such bond shall be valid until such new bond be given, notwithstanding its rejection by the court.

* * *

SEC. 24. All letters testamentary and of administration, shall be recorded by the clerk of the Probate Court, in a well-bound book kept for that purpose, before they are delivered to the executor or administrator; and the clerk shall certify on the letters that they have been recorded.

SEC. 25. If any clerk deliver such letters without recording the same, he may be fined by the court, and shall forfeit to the party injured, double the damages occasioned by such default.

SEC. 26. Copies of such letters, and copies of the records thereof, certified under the seal of the Probate Court, shall be evidence.

SEC. 27. All letters testamentary, to be issued to executors under the provisions of this act, may be in the following form:—

County of———, ss. The United States of America, to all persons to whom these presents shall come, greeting: Know ye, the will and testament of A. B., deceased, hath, in due form of law, been exhibited, proved, and recorded, in the office of the clerk of the Probate Court for ——— county, a copy of which is herewith annexed; and inasmuch as it appears that C. D. has been appointed executor, in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein; and that the said last will may be executed according to the request of the testator; we do hereby authorize him, the said C. D., as such executor, to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, in whosesoever hands or possession the same may be found; and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property, and the law charge him; and in general, to do and perform all other acts which now are, or hereafter may be required of him by law.

In testimony whereof, I, G. P., clerk of the Probate Court in and for said county of ———, have hereunto signed my name and affixed the seal of said court at office, this day of A. D., 18 . G. P., Clerk.

[Seal of Probate Court.]

SEC. 28. Letters of administration hereafter to be issued in this Territory, may be in the following form:—

County of ———, ss. The United States of America, to all persons to whom these presents shall come, greeting: Know ye, that whereas A. B., late of the county of ———, died intestate, as it is said, having at the time of his death property in this Territory, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved, and disposed of according to law, we do hereby appoint C. D. administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be, required of him by law.

In testimony whereof, I, G. P., clerk of the Probate Court in and for the county of ——— aforesaid, have hereunto signed my name, and affixed the seal of said court, at office, this day of A. D. 18 . G. P., Clerk.

[Seal of Probate Court.]

SEC. 29. In all cases where letters of administration with the will annexed, letters of administration *de bonis non*, during minority, or absence, shall hereafter be issued by the Probate Court, or the clerk thereof in vacation, the same shall be issued in conformity to the foregoing forms, as near as may be, taking care to make the necessary variations, additions, or omissions, to suit each particular case.

SEC. 30. If, after letters of administration granted, a will of the deceased be found, and probate thereof granted, the letters shall be revoked; and letters testamentary or of administration with the will annexed, shall be granted.

SEC. 31. If a will be found, and letters thereon granted, and the will be afterwards set aside, the letters shall be revoked, and other letters granted of the goods unadministered.

SEC. 32. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve upon him, but the marriage shall extinguish her powers, and her letters be revoked.

SEC. 33. If any executor or administrator become of unsound mind, or be convicted of any felony, or other infamous crime, or become a habitual drunkard, or otherwise incapable or unsuitable to execute the trust reposed in him, or fail to discharge his official duties, or waste, or mismanage the estate, or act so as to endanger any co-executor or co-administrator; the Probate Court, upon complaint in writing made by any person interested, and supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

SEC. 34. If any heir, legatee, creditor, or other person interested in any estate, file in the Probate Court an affidavit, stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to become insolvent; or has died, or has removed from the Territory; or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate; or that the penalty of such bond is insufficient, or that such bond has not been taken according to law; and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

SEC. 35. If any person bound as security in the executor's or administrator's bond, file in the Probate Court an affidavit, stating that ~~the affiant~~ has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to become insolvent, or has removed from the Territory; or the principal in such bond has, or is likely to become insolvent, or is wasting the estate; and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the complaint.

SEC. 36. If the Probate Court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given.

SEC. 37. Such additional bond, when given and approved, shall discharge the former securities from any liability arising from any misconduct of the principal, after filing the same; and such former securities shall only be liable for such misconduct as happened prior to the giving of such new bond.

SEC. 38. If such person fail to give such additional bond and security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

SEC. 39. It shall be the duty of the Probate Court, whenever it shall appear necessary and proper, to order an executor or administrator at least five days' notice of such intended order, and if such executor or administrator shall fail to give such further security, within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

SEC. 40. If any executor or administrator publish for eight weeks, in some newspaper in this Territory, a notice of his intention to apply to the Probate Court to resign his letters, and the Court on proof of such publication, shall believe that he should be permitted to resign, it shall so order: said publication of notice in the newspaper, upon application to the Probate Court for that purpose, may be dispensed with, and instead thereof the Probate Court may require said administrator to put ten written handbills in ten of the most public places in the county where he is conducting the business of his administrator, at least twenty days before the time at which he intends to resign his administration.

SEC. 41. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expenses of publication and all the proceedings on the application.

SEC. 42. If there be more than one executor, or administrator of an estate, and the letters of part of them be revoked or surrendered, or a part die, those who remain shall do all the duties required by law respecting the estate.

SEC. 43. If all the executors or administrators of an estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration; and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

SEC. 44. If any executor or administrator die, resign, or his letters be revoked, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money, real and personal property of any kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator, or his legal representatives.

SEC. 45. The succeeding administrator, or the remaining executor or administrator, may proceed at law against the delinquent and his securities, or either of them, or against any other person possessed of any part of the estate.

SEC. 46. All such suits against securities, shall be commenced within seven years after the revocation or surrender of the letters, or the death of the principal.

SEC. 47. If any executor or administrator fail to make either annual or final settlement, as required by law, and do not show good cause for such failure after citation, the Probate Court shall order the executor or administrator to give notice when required, and to make such settlement; and may enforce obedience to such order by attachment, or may revoke his letters.

SEC. 48. In all cases where citations or attachments may be issued against any executor or administrator for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

SEC. 49. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory which he is required by law to return to the Probate Court, the whole of the partnership estate, goods and chattels, rights, and credits, appraised at its true value, as in other cases; but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

SEC. 50. The property thus appraised shall remain with, or be delivered over, as the case may be, to the surviving partner, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he shall be required to give to the Territory of Oregon, in such sum, and with such securities, as is required in other cases of administration.

SEC. 51. The conditions of this bond shall be in substance as follows:—The condition of the above bond is, that if A. B., surviving partner of the late firm of ———, shall use due diligence and fidelity in closing the affairs of the late co-partnership, apply the property thereof towards the payment of the partnership debts, render an account upon oath to the Probate Court, whenever by it thereunto required, of all the partnership affairs, including the property owned by the late firm, and the debts due thereto, as well as what may have been paid by the survivor towards the partnership debts, and what may still be due and owing therefor; and pay over within two years, unless a longer time be allowed by the Probate Court, to the executor or administrator the excess, if any there be, beyond satisfying the partnership debts; then the above bond to be void, otherwise to remain in full force.

SEC. 52. The Probate Court shall have the same authority to cite such survivor to account, and to adjudicate upon such account, as in the case of any ordinary administration; and the parties interested shall have the like remedies by means of such bond, for any misconduct or neglect of such survivor, as may be had against administrators.

SEC. 53. In case the surviving partner, having been duly cited for that purpose, shall neglect or refuse to give the bond required in the fiftieth and fifty-first sections of this article, the executor or administrator on the estate of such deceased partner, in giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods and chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor in collecting the debts due the late firm, if necessary, and shall, with the partnership property, pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner his proportion of the excess, if there be any.

SEC. 54. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the Probate Court to give further bond, to its satisfaction, conditioned that he will faithfully execute that trust, and with no unnecessary waste or expense, which bond may be enforced like other administration bonds.

SEC. 55. Every surviving partner, on the demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof shall devolve upon such administrator, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

SEC. 56. Every surviving partner who shall neglect or refuse to comply with the provisions in the preceding section, may be cited for said neglect or refusal before the Probate Court; and unless he comply with such provision, or show sufficient excuse for his omission, the Probate Court may commit him to the common jail of the county, there to remain till he consent to comply, or is discharged by due course of law.

SEC. 57. When two or more persons are appointed executors, the court, or clerk in vacation, may take a separate bond, with securities from each of them, or a joint bond with securities from all of them.

SEC. 58. Letters testamentary and of administration, shall, in no case, be granted to a non-resident in this Territory; and when an executor or administrator shall become non-resident, the Probate Court having jurisdiction of the estate of the testator or intestate of such executor or administrator, shall revoke his letters.

ARTICLE II.—*Of their duties respecting Money and Property.*

SECTION 1. Every executor and administrator immediately after receiving letters, shall collect and take into possession the goods, chattels, money, books, papers, and evidences of debt, or of title to any real or personal estate, except the property reserved as the absolute property of the widow.

SEC. 2. He shall make an inventory of all the real and personal estate of the deceased, describing the quantity, situation, and title of the real estate, and also the books and papers; the debts due or to become due to the deceased, the names of debtors, the date of the contract, the amount of interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

SEC. 3. He shall annex to the inventory an affidavit, stating that it is a full inventory and description of all the money, goods, chattels, and estate real and personal, books, papers, and evidences of debt and of title of the deceased; and of all debts due and becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow; and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

SEC. 4. The inventory, with the affidavit, shall be filed in the office of the clerk of the Probate Court within sixty days after the letters are granted.

SEC. 5. If after making the first inventory, any other real or personal estate of the deceased come to his possession or knowledge, he shall file a similar additional inventory thereof.

SEC. 6. At the time of appointing an administrator, or of granting of letters testamentary to an executor, the court or clerk in vacation shall name two respectable householders of the vicinity of the last abode of the deceased, who are disinterested and of no kin to the administrator or executor, as witnesses to accompany and aid the administrator or executor in opening and examining the papers and money of the deceased, and in making an inventory thereof, and if they fail to attend, the court or clerk shall appoint others in their stead; so that two witnesses shall be present to attend the proceeding, before it shall be lawful for any executor or administrator to open or examine such papers or money by virtue of his appointment.

SEC. 7. The Probate Court shall allow such witnesses a compensation for such duties, not exceeding that allowed to appraisers.

SEC. 8. If any administrator or executor open or examine the papers or money of the deceased, without the publicity and attestation provided in this act; he shall forfeit and pay to the persons entitled to the estate, a sum not exceeding five thousand dollars, to be recovered before the Probate Court.

SEC. 9. If the executor or administrator, or other interested in any estate, file an affidavit in the Probate Court, stating that the affiant has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, money, books, papers, or evidences of debt of the deceased; the Probate Court may cite such person to appear before them, and compel such appearance by attachment; and examine him and other witnesses, on oath, for the discovery of the same.

SEC. 10. If any such person refuse to answer proper interrogatories, the court may commit him to jail until he answers, or be disharged by law.

SEC. 11. If any person charged and cited as aforesaid, shall appear, and in his answer to the interrogatories, deny the right of the executor or administrator to such goods, chattels, money, books, papers, or evidences of debt, the right thereof shall be tried by a jury, or if neither party require a jury, by the court in a summary manner, and judgment shall be rendered according to the right, and for costs.

SEC. 12. If any person shall be convicted of unlawfully detaining such goods, chattels, money, or effects, books, papers, or evidences of debt, the court may compel the delivery thereof by attachment.

SEC. 13. After having collected personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county.

SEC. 14. Before entering on their duties, the appraisers shall make an affidavit, stating that they are not interested, nor of kin to any person interested in the estate, as heir or devisee, and that they will, to the best of their ability, view and appraise the personal estate to them produced.

SEC. 15. The appraisers shall view and appraise such property, and make a list, specifying each article appraised, its value, and total amount of the appraisement, which shall be signed by the appraisers, or two of them.

SEC. 16. The appraisement and affidavit shall be filed in the office of the clerk of the Probate Court, within sixty days after letters granted.

SEC. 17. Each appraiser shall receive from the estate, two dollars per day for his attendance.

SEC. 18. Every executor or administrator shall cause similar appraisements to be filed of all personal estate which shall come into his possession after the first appraisement.

SEC. 19. Inventories and appraisements may be given in evidence, but shall not be conclusive for or against any executor or administrator, but other evidence may be introduced to vary the effect thereof.

SEC. 20. Within thirty days after letters are granted, the executor or administrator shall publish in some newspaper in this State, for three weeks, a notice that letters testamentary, or of administration have been granted to him, stating the date, and requiring all persons having claims against the estate, to exhibit them for allowance to the executor or administrator, within one year after the date of the letters, or they may be precluded from any benefit of such estate; and that if such claim be not exhibited within three years from the date of the letters, they shall be for ever barred.

SEC. 21. When an intestate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised amount of his estate.

SEC. 22. Executors and administrators shall collect all money, and debts of every kind due to the deceased, and give receipts and discharges therefor; and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as may be brought against him.

SEC. 23. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator.

SEC. 24. In all actions prosecuted or defended by or against any executor or administrator, he shall not be disqualified from being a witness as to facts occurring anterior to his qualification, on account of being executor or administrator.

SEC. 25. For all wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong doer, such action may be brought by the person injured, or after his death, by his executor or administrator, against such wrong doer, and after his death, against his executors or administrators, in the same manner, and with the like effect, in all respects as actions founded upon contract.

SEC. 26. The preceding section shall not extend to actions for slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

SEC. 27. All debts due by an administrator to his testator or intestate, shall be considered as assets in his hands.

SEC. 28. If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands.

SEC. 29. In addition to dower, a widow shall be allowed to keep, as her absolute property, all the wearing apparel of the family; her wheels, looms, and other implements of industry; all yarn, cloth, and clothing, made up in the family for their own use; all grain, meat, vegetables, groceries, and other provisions on hand, and provided and necessary for the subsistence of the widow and family for twelve months; and as many beds, with bedding, as shall be necessary for herself and the family of the deceased residing with her, and under her control.

Sec. 30. In addition to the above, the widow may take such personal property as she may choose, not to exceed the appraised value of two hundred dollars, for which she shall give a receipt.

Sec. 31. The widow shall apply for such property named in the preceding section, before the same be *distributed* or *sold*, and it shall be deducted from her dower in the personal estate, if there be any; but the property so delivered, shall in no case be liable for the payment of the debts of the deceased.

Sec. 32. If the widow do not receive the property thus allowed her, and the same shall be sold by the executor or administrator, the Probate Court shall order the money to be paid to the widow, at any time before the same be paid out for debts, or be distributed.

Sec. 33. Every executor or administrator, after the appraisement, shall sell at public sale, all goods and chattels of the deceased that are liable to perish, be consumed, or rendered worse by the keeping, giving such credit as he may think best, and take bonds or notes, with good security, of the purchaser.

Sec. 34. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner, sell other personal estate, until the debts and legacies be all paid; but specific legacies shall not be sold in any case, unless it be necessary for the payment of debts.

Sec. 35. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees and distributees, in discharge of such an amount of their claims, equal to the amount of such bond or note.

Sec. 36. They shall give notice of the time and place of sale, for three weeks, in some newspaper in this Territory, or by handbills, put up in eight public places in the county where the sale is made.

Sec. 37. If any testator direct his estate not to be sold, the same shall be reserved, unless such sale be necessary for the payment of debts.

Sec. 38. When there are no known heirs or legal representatives, the administrator shall sell all the personal estate of the deceased, within one year after administration is granted.

Sec. 39. If any executor or administrator apply to the Probate Court for permission to sell the personal estate of the deceased, or any part thereof, at private sale, and the court be satisfied that such sale would not be prejudicial to the persons interested in the estate, it may order such sale, and prescribe the terms thereof.

Sec. 40. In every public sale, the executor or administrator shall employ a competent clerk, not interested nor of kin to any heir or devisee of the estate.

Sec. 41. Such clerk shall keep a true account of the sales made, make a list of sale specifying each article sold, the price, and the

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name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such executor or administrator at the time specified.

Sec. 42. Such sale bill shall be filed by the executor or administrator in the office of the clerk of the Probate Court, within thirty days after the sale, and it shall be evidence in the same manner and with like effect as inventories.

Sec. 43. Executors and administrators under the direction of the Probate Court, shall lease the real estate for any term not more than three years, and shall receive and recover the rents thereof.

Sec. 44. When any house, out-building, fence or other improvement on the real estate requires repairs, the Probate Court may, on the application of any person interested, order the executor or administrator to cause the necessary repairs to be made without prejudicing creditors.

Sec. 45. At every term of the Probate Court, they shall examine all inventories, appraisements, and sale bills filed since their last term, to see if they have been made and filed according to law; and shall issue citations to compel all delinquents to comply with the law.

Sec. 46. If a person die, having horses or other stock that require attention, crops ungathered, property so exposed as to be in danger of loss in value, or work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor; the executor or administrator may, until the meeting of the Probate Court, procure such indispensable labor to be performed on the most reasonable terms that he can.

Sec. 47. The Probate Court, on the application of any person interested, may in such cases authorize further labor to be performed as the interest of the estate requires; and all sums thus paid, if approved by the court, shall be allowed as expenses of administration.

Sec. 48. All interest received by executors or administrators on debts due to the deceased, shall be assets in their hands; and if they lend the money of the deceased, or use it for their private purposes, they shall pay interest thereon to the estate.

Sec. 49. The Probate Court shall exercise an equitable control in making executors and administrators account for interest accruing to the estate on account of money loaned by them belonging to the estate, or otherwise, and for that purpose may take testimony, or examine the executor or administrator on oath.

Sec. 50. Every executor and administrator, at the second term after the one at which he is required to make settlement, shall render to the court a statement on oath, of the amount of money of the estate actually on hand.

Sec. 51. If on the return of the inventory, or at any other time, it shall appear to the satisfaction of the Probate Court, that there is a surplus of money in the hands of the executor or administrator, that will not be shortly required for the expenses of the administration, or payment of debts, they shall have discretionary power to order him to lend out the money on such terms and for such time, as they may judge best.

SEC. 52. The Probate Court may at any time make such orders as the interest of the estate may require, for the speedy collection of debts, or the sale or distribution of personal property.

SEC. 53. All executors and administrators, may give receipts and discharges for money received by them on account of the deceased; but if there be more than one executor or administrator, a majority shall join in such receipt or discharge, or they shall be void.

SEC. 54. If personal property shall be bound by the lien of an execution or executions, whether such execution or executions shall have been levied or not, at the time of the death of the testator or intestate, the executor or administrator shall, nevertheless, inventory, cause to be appraised, and sell the same, as if no such lien existed; except that a separate inventory, appraisement, and sale bill of such property shall be made and returned.

SEC. 55. The proceeds of the sale of such personal property shall be applied, under the direction of the Probate Court, in the following manner: 1st. When there is but one execution, to the payment of such execution, and the residue, if any, shall be assets to be administered according to law. 2d. When there is more than one execution, the liens whereof are of even date, to the payment of such executions, and the residue, if any, shall be assets to be administered according to law; but if such proceeds shall not be sufficient to pay the whole, then in proportion to their respective amounts. 3d. When there is more than one execution, the liens whereof are of uneven date, and such proceeds shall not be sufficient to pay the whole, to the payment thereof according to their priority of lien.

SEC. 56. The provisions of the two preceding sections shall not be construed to deprive the widow of the benefit of the twenty-seventh, twenth-eighth, and thirtieth sections of the second article of this act; nor to deprive the demands classed in the first and second subdivisions of the first section of the fourth article of this act, of their precedence over all other demands against the estate of the deceased.

SEC. 57. In all cases where any person shall die, leaving a widow, or other family, the Probate Court has power, if in its opinion it will not be prejudicial to creditors, and will be advantageous to such widow, or others entitled to distribution in the estate, to order that no more of the personal estate shall be sold than will be sufficient to pay the debts: *Provided*, The Probate Court shall take good and sufficient security that the property shall be forthcoming to answer the demands of any creditors or others concerned in the estate.

SEC. 58. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such personal property as is ordered not to be sold, in possession of the widow or other persons of the family, who shall use and enjoy the same until the Probate Court shall order such property to be administered upon.

Sec. 59. If property is about to be sold in the vacation of the Probate Court, any Justice of such Probate Court has power, upon the petition of the executor or administrator, or of any person interested in the estate, to order the suspension of such sale, until the next term of the Probate Court.

Sec. 60. In any case where the court has ordered that property shall not be sold, if it shall appear to the Probate Court that such property is likely to be injured or wasted, or that those interested therein, would be benefited thereby, such court shall order that such estate be forthwith administered; and in such cases the rights of all persons interested shall be the same as if the order, provided for in the fifty-seventh section of this article, had not been made.

Sec. 61. For good cause shown, the Probate Court may continue any matter or proceding arising before them under this act, on such terms as it may consider just.

Article III.—*Of their duties respecting the sale of Real Estate.*

Section 1. The sale and conveyance of real estate under a will, shall be made by the acting executor or administrator, with the will annexed, if no other person be appointed for that purpose by the will, or if such person fail to perform the trust.

Sec. 2. If any person die, having purchased real estate, and shall not have completed the payment, nor devised such estate, nor provided for the payment by will, and the completion of such payment would be beneficial to the estate, and not injurious to creditors; the executor or administrator, by order of the Probate Court, may complete such payments out of the assets in his hands, and such estate shall be disposed of as other real estate.

Sec. 3. If the court believe that after the payment of debts, there will not be sufficient to pay for such real estate, the court may order the executor or administrator to sell all the rights, title, and interest of the deceased therein.

Sec. 4. If such real estate has been purchased from individuals, the court may, if they believe it advantageous to the estate, order the same to be relinquished to such individuals on the most advantageous terms that can be agreed upon.

Sec. 5. If such real estate shall have been purchased from any officer authorized by law to sell school lands, the Probate Court may, in its discretion, order the same to be relinquished; and in such cases, the officer shall be authorized to accept of such relinquishment, and surrender the obligation of the deceased.

Sec. 6. If any person die, having mortgaged any real estate, or mortgaged or pledged any personal property, or owning any equity of redemption, and shall not have devised the same, or provided for the redemption of the same by will; the Probate Court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal assets, if it would be beneficial to such estate, and not injurious to the creditors.

SEC. 7. If such redemption would injure the estate, or creditors, or there would not be assets to redeem such estate after payment of debts, the court shall order all the right, title, and interest of the estate to such property, to be sold at public sale.

SEC. 8. In all cases of relinquishment of the interest of the testator or intestate, under the provisions of the fourth and fifth sections of this article, and in all cases of the sale of the interest of the testator, or intestate, under the third and seventh sections of this article; the executor and administrator shall be competent by deed, to make such relinquishment, or to convey to the purchaser all the right, title, and interest, the testator or intestate had in and to such real estate at the time of his death.

SEC. 9. If any person die, not having personal estate sufficient to pay his debts, the executor or administrator shall file a petition to the Probate Court, stating the facts, and praying for the sale of the real estate, or so much thereof as will pay the debts.

SEC. 10. If such real estate be bound by the lien of a judgment, the executor or administrator shall state that fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered.

SEC. 11. The proceeds of the sale of such real estate shall be first applied to the payment of such judgment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

SEC. 12. If such real estate be bound by the lien of several judgments, the executor or administrator shall state that fact in his petition, the dates and amounts of such judgments, and the names of the persons in whose favor the same were rendered.

SEC. 13. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments, according to the priority of lien.

SEC. 14. The residue of such proceeds, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

SEC. 15. If the lien of such several judgments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments in proportion to their respective amounts.

SEC. 16. If such real estate, being or having been bound by the liens of several judgments, shall have been sold under a junior judgment, the executor or administrator shall state in his petition the fact of such sale, the name of the plaintiff in such junior judgment, the name of the purchaser, the dates and amounts of the several judgments, and the names of the persons in whose favor such several judgments were rendered.

SEC. 17. The Probate Court shall thereupon order that the plaintiff in the judgment under which such real estate was sold, and the purchaser thereof, shall be notified of the filing of such petition, stating briefly the substance and prayer of the petition; and that unless good cause to the contrary be shown, on the first day of the next term, an order will be made for the sale of the whole, or so much of such real estate as will be sufficient to pay the prior judgment or judgments.

SEC. 18. Such notice shall be published as other notices are required to be published, in cases of petitions for the sale of real estate, in virtue of the provisions of this act.

SEC. 19. The purchaser of such real estate shall have the privilege of paying such prior judgment or judgments, at any time within six months from, and including the first day of the term of the court at which he is notified to appear.

SEC. 20. If the purchaser of the real estate, under such junior judgment, shall fail to pay such prior judgment or judgments, within the time prescribed in the preceding section, such real estate shall be sold free from the incumbrance of the title derived from the sale under such junior judgment; and the proceeds of such sale shall be disposed of according to such of the provisions of the tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth sections of this article, as shall be applicable to the facts of the case.

SEC. 21. The petition, to be filed according to the provisions of the ninth section of this article, shall be accompanied by a true account of his administration, a list of the debts due to and by the deceased, and remaining unpaid; and an inventory of the real estate and of the remaining personal estate, with its appraised value, and all the other assets in his hands; the whole to be verified by the affidavit of the executor or administrator.

SEC. 22. If such executor or administrator do not make such application, any creditor, or other person interested in the estate, may make such application, giving twenty days' notice to the executor or administrator.

SEC. 23. Every such executor or administrator, on or before the first day of the term of the court at which he is notified that such application will be made, shall file with the clerk of the court perfect accounts, lists and inventories, made out and verified as those required to accompany a petition by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment.

SEC. 24. When such petition, and such accounts, lists, and inventories shall be filed, the court shall order that all persons interested in the estate be notified thereof; and that unless the contrary be shown on the first day of the next term of the court, an order will be made for the sale of the whole, or so much of the real estate as will pay the debts of the deceased; such notice shall be published for six weeks in some newspaper in this Territory, or by ten handbills, to be put at ten public places in the county in which the land lies, at least twenty days before the term of the court at which any such order will be made, in the discretion of the Probate Court.

SEC. 25. Upon proof of publication, the court shall hear the testimony, and may, if necessary, examine all parties on oath, touching the application, and make an order for the sale of such real estate, or any part thereof in this Territory, at public or private sale.

SEC. 26. If any executor or administrator, or other person interested in any estate, file a petition, setting forth the facts, and describing the real and personal estate, and praying that the personal estate may be reserved, and real estate be sold for the payment of debts; the same steps shall be taken, and the same proceedings and publication had as above directed upon a petition to sell real estate for the payment of debts, and the court may order the whole, or any part of the personal estate to be reserved, and the real estate, or any part of it, may be sold at public or private sale.

SEC. 27. Before any executor or administrator shall sell any real estate, or any interest therein, by order of any court, he shall have it appraised by three disinterested householders of the county in which it lies.

SEC. 28. Such appraisers shall make an affidavit, that they will, according to the best of their abilities, view and appraise the estate to them shown, and they shall view and appraise the same, and deliver to the executor or administrator a certificate thereof under their hands.

SEC. 29. In all sales of real estate made by an executor or administrator, he shall cause a notice containing a particular description of the estate to be sold, and stating the time, place, and terms of the sale, to be published in some newspaper in this Territory for four weeks, and shall put up a copy of such notice at ten public places in the county in which the sale is to be made, twenty days before the sale. If the Probate Court shall think it advisable, and so order, the publication of such notice in the newspaper may be dispensed with.

SEC. 30. All public sales of real estate made by order of any court for the payment of debts, shall be made at the Court House door of the county in which such estate is situated, at some day while the District or Probate Court is in session, and shall be conducted openly by auction.

SEC. 31. No real estate sold for the payment of debts shall be sold at private sale for less than three-fourths of its appraised value, nor shall the executor or administrator, directly or indirectly, become the purchaser of such real estate at public sale, at less than three-fourths of its appraised value.

SEC. 32. At the next term of the Probate Court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement, and a copy of the advertisement; which report shall be verified by affidavit, stating that he did not, directly or indirectly, purchase such real estate, or any part thereof, or any interest therein, and that he is not interested in the property sold, except as stated in the report.

SEC. 33. If such report and proceedings of the executor or administrator be not approved by the court, his proceedings shall be void, and the court may order a new sale, upon which the same proceedings shall be had as upon the original order.

SEC. 34. If such report be approved by the Probate Court, such sale shall be valid, and the executor or administrator (or if he be the purchaser, the clerk of the county court) shall execute, acknowledge, and deliver to the purchaser a deed, reciting the order of sale, and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings, and the consideration, and conveying to the purchaser all the right, title, and interest which the deceased had in the same.

SEC. 35. Such deed shall convey to the purchaser all the right, title, and interest which the deceased had in such real estate at the time of his death, discharged from liability of his debts, and shall be evidence of the facts therein recited.

SEC. 36. If any testator or intestate shall have entered into a contract in writing for the conveyance of any real estate, and shall not have executed the same in his lifetime, nor given power by will to execute the same; the other party wishing a specific execution of such contract, may file a petition to the Probate Court, setting forth the facts, and praying that an order may be made that the executor or administrator execute such contract specifically, by executing to him a deed for the same.

SEC. 37. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

SEC. 38. A notice of such application, and a copy of the petition, shall be served on the executor or administrator twenty days before the first day of the term at which it is to be made.

SEC. 39. If the court, after hearing all parties, believe that specific execution of such contract ought to be made, it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their bill in chancery, to set aside such order for fraud or otherwise.

SEC. 40. When any order for the specific execution of a contract shall be made, the executor or administrator shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate according to the order, and expressing therein the saving of the rights above named, according to the order, and stating the date of the order, and the court at which it was made.

SEC. 41. Such deed shall be as effectual as if it had been executed by the deceased.

SEC. 42. The party entitled to such specific performance of a contract, may bring his petition in the District Court in the first instance, and if it be brought in the first instance in the Probate Court, the executor, administrator, widow, or any heir or devisee of the estate may appear and allege that he is unwilling to have the same tried in the Probate Court, and the court shall order the same to be certified to said District Court.

SEC. 43. If any such petition be thus filed or certified to the District Court, it shall proceed thereon according to the practice of courts of chancery, and if it appears that such specific execution ought to be made, it shall make a decree for that purpose, in the same manner, and with the same reservations, as above required in cases of orders by the Probate Court.

SEC. 44. If any executor or administrator hold a bond or any other instrument of writing on the testator or intestate, for the conveyance of any real estate, which shall not have been completed within the lifetime of such testator or intestate, nor power by will given to execute the same; the executor or administrator shall proceed against his co-executor or co-administrator in the same manner as prescribed by this article in other cases; but if there be no such co-executor or co-administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person to appear and manage the defence on the part of those interested, who shall have all the powers, and perform the same duties required of executors or administrators in such case, by this article.

SEC. 45. If, upon the settlement of the accounts of any executor or administrator, it appears that the personal estate is not sufficient to satisfy all demands established against such estate, the Probate Court may make such order as it may think necessary for the sale of the real estate for that purpose; and the sale shall be conducted, and the same proceedings had in relation thereto, as is provided in this article in relation to the sale of real estate for the payment of debts upon the petition of the executor or administrator, creditor, or other person interested.

ARTICLE IV.—*Of the allowances of demands against Estates.*

SECTION 1. All demands against the estate of any deceased person shall be divided into the following classes: *First*, Funeral expenses; *Second*, Expenses of the last sickness, wages of servants, and demands for medicines and medical attendance during the last sickness of the deceased; *Third*, Debts due the estate; *Fourth*, Judgments rendered against the deceased in his lifetime; but if any such judgments shall be liens upon the real estate of the deceased, and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid as provided in the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeeth, eighteenth, nineteenth, and twentieth sections of the third article of this act, without reference to classifications, except the classes of demands mentioned in the first and second subdivisions of this section, shall have precedence of such judgments; *Fifth*, All demands, without regard to quality, which shall be legally exhibited against the estate within one year after the granting of the first letters on the estate; *Sixth*, All demands thus exhibited after the end of one year, and within two years after letters granted; *Seventh*, all demands thus exhibited after the expiration of two years, and within three years after granting of such letters.

SEC. 2. All demands not thus exhibited within three years, shall be for ever barred, saving to infants, persons of unsound mind, imprisoned or absent from the United States, and married women three years after the removal of their disabilities.

SEC. 3. All actions pending against any person at the time of his death, which, by law, survive against the executor or administrator, shall be considered demands legally exhibited against such estate, from the time such action shall be revived, and classed accordingly.

SEC. 4. All actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands, legally exhibited against such estate, from the time of serving the original process on such executor or administrator.

SEC. 5. Any person may exhibit his demand against such estate, by serving upon the executor or administrator a notice in writing, stating the nature and amount of his claim, with a copy of the instrument of writing, or account upon which the claim is founded; and such claim shall be considered legally exhibited from the time of serving such notice.

SEC. 6. Every executor and administrator shall keep a list of all demands thus exhibited, classing them, and make returns thereof to the Probate Court every year, at the time at which he is to make settlement.

SEC. 7. Any person having a demand against an estate, may establish the same by a judgment or decree of some Court of Record, in the ordinary course of proceeding, and exhibit a copy of such judgment or decree, and shall also exhibit copies of all judgments and decress rendered in the lifetime of the deceased, to the court.

SEC. 8. The Probate Court shall have jurisdiction to hear and determine all demands against any estate, and a concise entry of the order of allowance shall be made on the records of the court, which shall have the force and effect of a judgment.

SEC. 9. No Probate Court shall allow any demand against any estate, when the estate is indebted to said claimant, after allowing all just credits and assets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, he has given credits to the estate for all payments and assets to which he is entitled, and that the balance claimed is justly due.

SEC. 10. No Probate Court shall allow any demand against any estate, when the claimant is indebted to said estate after allowing all just credits and assets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, he has given credits to the estate for all payments and assets to which it is entitled, and that his account or demand, as presented, is correctly stated; and the affidavit in this section, and the preceding one, shall not be received as any evidence of the demand, but the same shall be established by competent legal testimony before it is allowed or adjusted.

SEC. 11. The affidavit or oath required by the two preceding sections, may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing, personally, the facts required to be sworn to by those sections; and administrators and executors shall not be required to make such affidavits in relation to any demand in favor of the estate, which accrued prior to their letters of administration.

SEC. 12. Any person desiring to establish any demand against any estate, shall deliver to the executor or administrator, a written notice containing a copy of the instrument of writing or account, on which it is founded, and stating that he will present the same for allowance at the next term of the Probate Court.

SEC. 13. Such notice shall be served on the executor or administrator ten days before the beginning of such term of the court, and may be served by any sheriff or constable, or by any competent witness, who shall make affidavit to such service.

SEC. 14. The executor or administrator may appear in court, and waive the service of any such notice.

SEC. 15. The Probate Court shall hear and determine all demands in a summary way, without the form of pleading, and shall take the evidence of competent witnesses, or other legal evidence.

SEC. 16. Any person may take depositions in support of his demand at his own expense, if he first procure the written consent of the executor or administrator; and such depositions may be taken in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand.

SEC. 17. If the demands do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand.

SEC. 18. If the demand exceed twenty dollars, and either party require a jury, one shall be immediately summoned, and the trial shall be conducted in a summary manner, without the form of pleading; and when the demand is not due at the time of trial, the court or jury may adjust the same by rebating therefrom at the rate of six per cent. per annum, from the time of trial until due.

SEC. 19. Any executor or administrator may establish a demand against his testator, or intestate, by proceeding against his co-executor or co-administrator in the manner prescribed for other persons; but if there be no co-executor or co-administrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defence on the part of the estate.

SEC. 20. When a demand shall be presented to the Probate Court for allowance, if the demand be allowed, the estate shall pay the costs; if disallowed, the party presenting the claim shall pay the costs.

SEC. 21. The clerk of the Probate Court shall keep an abstract of all judgments of other courts filed, and of all demands established in the Probate Court against such estate, which shall show their amount, date, class, and to whom payable.

SEC. 22. If any judgment of a Court of Record be filed in the Probate Court, and when demands are allowed against any estate in the Probate Court, such court shall determine its class, and the clerk shall make an entry thereof in his abstract, and when thus classed, the executor may satisfy such demand according to such classification.

SEC. 23. When any such demand has been allowed, the clerk shall endorse on the back thereof the amount allowed thereon, and the class to which it belongs, and deliver the same to the demandant.

SEC. 24. All demands against any estate, shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed; and no demand of one class shall be paid until all previous classes be satisfied; and if there be not sufficient to pay the whole of one class, such demands shall be paid in proportion to their amounts.

SEC. 25. If any person commence a suit of any kind in the Circuit Court, against an estate, within one year from the date of administration, he may recover judgment, but shall pay all costs.

SEC. 26. If any executor or administrator shall temporarily absent himself from this Territory, he shall appoint an agent in writing (and file such appointment in the office of the court having jurisdiction of his testator or intestate's estate), to whom notice of demands against his testator or intestate's estate, as provided in the fifth and tenth sections of this article, may be given; and upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate.

SEC. 27. Notice given to such agent, or filed, as aforesaid, among the papers relating to the estate against whom the demand is claimed, shall be as effectual as if it had been given to the executor or administrator.

SEC. 28. If the executor or administrator shall, within four months after any demand shall have been allowed, upon notice given as prescribed in the two previous sections, file in the office of the court having jurisdiction of the estate, the affidavit of himself or some other credible person, stating that the affiant has good reason to believe, and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance and try the matter anew, and allow or reject such demand, as shall be right; and if upon such new hearing such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted.

Sec. 29. It shall be the duty of the Probate Court, at the next term after letters testamentary or of administration are granted on any estate (if in their opinion the interest of the estate requires it), to appoint some suitable disinterested person as commissioner, whose duty it shall be to audit and settle all demands exhibited to him against said estate, not exceeding the sum of one hundred dollars. He shall fix upon such times and places as shall be most convenient to the largest number of creditors of such estate, and give reasonable notice thereof to the executor or administrator, and to the creditors of the estate: the time and manner of the notice to be prescribed by the court. The commissioner shall make out an exhibit of all demands brought before him, noting thereon which items he allows and which he rejects, or how much of each he allows or rejects, and in what classes those he allows are to be paid, and file such exhibits with the clerk of the Probate Court at its next term, which shall remain in the office of the clerk of the court, until the end of the next following term. The commissioner shall have power to administer oaths to witnesses, and shall administer to all claimants, the oath required by the ninth section of this article.

Sec. 30. If any executor or administrator, or any claimant, shall, before the end of the next term after the one at which the commissioner's report shall have been filed in the clerk's office, object in writing, to the decision of the commissioner as to any item therein, the same shall be tried before the Probate Court, as is now provided by law, the court giving to each party reasonable time to procure his witnesses; and such report, as to all such items, not so objected to, shall be confirmed by the court, and payment ordered accordingly.

Sec. 31. If any creditor shall have an opportunity to present his demand before such commissioner, and shall fail and neglect to do so, he shall not be prevented from having the same allowed by the Probate Court, as is now provided for by law; but the court may, in its discretion, compel him to pay all costs attending the establishment and allowance of the same.

Sec. 32. The court shall allow said commissioner, out of said estate, a reasonable compensation for his services.

Article V.—*Of the settlement of their Accounts.*

Section 1. The clerk of the Probate Court shall provide well-bound books, and enter therein the accounts and settlements of all executors and administrators made in the court, in such manner as to form a complete record of all such accounts settled in that court.

Sec. 2. Every executor and administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the Probate Court at its first term after the end of one year from the date of his letters, and at the corresponding term of such court every year thereafter, until the administration be completed.

SEC. 3. The clerk of the Probate Court shall keep a docket, and enter therein a list of all executors and administrators who have not made final settlement of their accounts, the date of their letters, and the term at which they are required to make settlement.

SEC. 4. The clerk shall put up at some conspicuous place in his office, thirty days before each term, a list of the executors and administrators whose settlements are required to be made at that term.

SEC. 5. If any executor or administrator fail to present such settlement, the clerk shall immediately issue a citation to any county in the Territory, requiring him to present his accounts for settlement at the next term of the Probate Court, and show cause why an attachment should not issue against him for not exhibiting his accounts at the term at which he was required to settle.

SEC. 6. If such citation be not served, the clerk shall, under the direction of the court, issue an alias citation, which may be served, or may be published in some newspaper in this Territory, one month before the return thereof.

SEC. 7. If after such service or publication, no cause to the contrary be shown, such executor or administrator may be fined by the Probate Court, not exceeding twenty-five dollars, to the use of the county; and such executor or administrator shall be liable upon his bond for failing to settle.

SEC. 8. The Probate Court may revoke the letters of such delinquent, and may issue attachment and other process to compel such settlement, directed to any county in the Territory, and in all such cases, such delinquent shall pay costs.

SEC. 9. When any executor or administrator shall present his accounts for settlement, the Probate Court shall settle the same according to law; allow all reasonable charges for the expenses of administration, funeral expenses, and all disbursements and appropriations made by order of the court, and a reasonable compensation for the trouble and expenses of the executor or administrator.

SEC. 10. Upon any settlement, the executor or administrator shall show that every claim for which disbursements have been made, has been allowed by the court, according to law; or shall produce such proof of the demand as would enable the claimant to recover in a suit at law.

SEC. 11. At every settlement, the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator from all sources, and the amount of debts allowed against such estate; and if there be not sufficient to pay the whole of the debts, and expenses of administration, the money remaining, after paying the expenses of administration, shall be apportioned among the creditors, according to this act; and the court shall order that such executor or administrator pay the claims allowed by the court, according to such apportionment, reserving apportionments made on claims which remain undecided until decision be had thereon.

SEC. 12. The Probate Court, upon any settlement, shall proceed in like manner till all the debts be paid, or the assets exhausted; and if, upon such settlement, there shall be money enough to satisfy all demands of any one class, legally exhibited against such estate, the court shall order the whole to be paid.

SEC. 13. If any executor or administrator fail to pay any claim thus ordered to be paid, according to the two preceding sections, when demanded, the clerk of the Probate Court, on application of such creditor, and being satisfied that such demand has been made, shall issue execution for the amount ordered to be paid and costs, against the property, goods, chattels, and real estate of such executor or administrator.

SEC. 14. If any such execution be returned unsatisfied, the creditor may sue out of the Probate Court a *scire facias* against any one or more of the securities of such executor or administrator, referring to the bond, the order of payment, the execution and return, and requiring such security to show cause why judgment should not be rendered against him for the amount ordered to be paid and still unsatisfied.

SEC. 15. Such *scire facias* may be directed to, and served in any county in this Territory; and if upon the return thereof, good cause to the contrary be not shown, the court shall render judgment against such security for the amount unpaid, and costs, and award execution therefor.

SEC. 16. If any executor or administrator wish to make final settlement, he shall publish for four weeks, in some newspaper in this Territory, a notice to all creditors, and others interested in the estate, that he intends to make final settlement at the next term of the court.

SEC. 17. If it appear to the court that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement; which shall be conducted as annual settlements.

SEC. 18. At its final settlement, the court shall give credit to the executor or administrator, for debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debt was not really due to the estate; or that it has been balanced or reduced by offsets in any court of competent jurisdiction, or the debtor was insolvent; or that from any other cause it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence.

ARTICLE VI.—*Of the distribution of the Estate.*

SECTION 1. Executors and administrators shall not be compelled to make distribution, or pay legacies, until one year after the date of the letters, unless the legacies specified would be perishable, or subject to injury if retained one year.

SEC. 2. No executor or administrator shall be compelled to pay legacies, or make distribution within three years after the date of his letters, unless ordered to do so by the court, until bond and security be given by the legatee or distributee to refund his due proportion of any debt which may afterwards be established against the estate, and the costs attending the recovery thereof. But the widow shall not be required to give such bond before she receive the property selected by her under this act.

SEC. 3. If upon any settlement, it appear that there is sufficient money to satisfy all the demands against an estate, the court shall order the payment of legacies, and distribution of shares, as in the case of debts; except that specific legacies shall be first satisfied.

SEC. 4. If personal property descend, and an equal division thereof cannot be made in kind, the Probate Court may order the sale of such property (prescribing the time, place, manner and times of sale), and cause the money to be distributed according to the rights of those entitled to distribution.

SEC. 5. Each person entitled to distribution, not applying therefor, shall be notified in writing of such application, ten days before such order shall be made; or if such person do not reside in this Territory, a notice of such application shall be published in some newspaper in this Territory, eight weeks before such order shall be made.

SEC. 6. When such order for the sale of personal estate shall be made by the court, it shall settle the claims of the distributee, and order the person selling such property to distribute the money arising therefrom, according to the rights of each person.

SEC. 7. If any distributee become a purchaser of such property, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase money, and the court shall allow the amount of such receipt, as so much distributed under the order of the court.

SEC. 8. If real estate be sold for the payment of debts, in lieu of the personal estate, under this act, the court, in making distribution of the personal estate reserved, shall cause the same to be appraised by three disinterested persons, sworn for that purpose, and shall allow the widow only such amount as she would have been entitled to, had the amount of debts paid by money made by the sale of real estate, been paid out of the personal estate.

SEC. 9. If, after the payment of legacies or distributions, it becomes necessary that the same, or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees, or distributees, according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be not sufficient to satisfy such debts.

SEC. 10. If any legatee or distributee fail to refund according to such order, the court shall, on motion of the executor or administrator, ten days' notice in writing having been given to the legatee or distributee, enter judgment for the amount apportioned to him.

SEC. 11. The Probate Court, as occasion may require, may order such appropriations for the support of minor children of the deceased, not otherwise provided for, as will not prejudice the rights of creditors.

SEC. 12. Until the widow's dower be assigned, the court shall order such sum to be paid her out of the rent of real estate, as shall be in proportion to her interest in the real estate.

SEC. 13. If, upon the return of the inventory and appraisement, it appears to the court that the whole amount of the estate is not more than that to which the widow is by law entitled, without being subject to the payment of debts, and that there are no debts due the estate, or so small that they would not defray the expenses of collection, and of administration; the Probate Court may, in its discretion, make an order that such estate be delivered to the widow, and that all other further advertisements, settlements, and other proceedings under said administration, be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with.

SEC. 14. If, upon final settlement, it appear that any legatee, or distributee is a non-resident, or from any other cause, is not in a situation to receive his share, and give a discharge therefor, or does not appear by himself or agent, to receive the same, the Probate Court shall order the executor or administrator to lend out the money on good security, for such limited time as the court may direct, not exceeding one year.

SEC. 15. In all cases where the legatee or distributee shall not appear within one year after the final settlement by the executor or administrator, and claim his share, the Probate Court shall order the same to be paid into the territorial treasury.

SEC. 16. When any share shall be paid into the treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall file in the office of the auditor, who shall charge the treasurer with the amount, and the other with the clerk of the Probate Court ordering the share to be paid into the treasury, and the court shall credit the executor or administrator therewith.

SEC. 17. When any legatee or distributee shall appear and claim any share paid into the treasury, the Probate Court before whom the final settlement was made, being first satisfied of his right, shall grant him a certificate, under its seal; and on presentation of the certificate to the auditor, he shall draw his warrant on the treasury for the amount.

SEC. 18. If, after the expiration of one year after the final settlement, there should remain in the hands of the executor or administrator, personal property unclaimed by the legatee or distributee, the court shall order the same to be sold, and the proceeds paid into the territorial treasury, and the same may be drawn therefrom in the manner provided by the preceding section.

SEC. 19. When administration shall be taken in this Territory on the estate of any person, who, at the time of his death, was an inhabitant of any other State or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, if he left any duly executed, according to the laws of this Territory; and his personal estate, according to his last will, if he left any duly executed, according to the laws of his domicil; and if there should be no such will, his real estate shall descend according to the laws of this Territory, and his personal estate be distributed and disposed of according to the laws of the State or country of which he was an inhabitant.

SEC. 20. Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this Territory, the residue of the personal estate, if any, may be distributed and disposed of in manner aforesaid, by the Probate Court in which the estate is settled; or it may be transmitted to the executor or administrator, if there be any in the State or country where the deceased had his domicil, as the court, under the circumstances, may think best.

SEC. 21. If such deceased person died insolvent, his estate found in this Territory, shall, as far as practicable, be so disposed of, that all his creditors here and elsewhere, may receive an equal share, in proportion to their respective debts.

SEC. 22. To this end, his estate shall not be transmitted to the foreign executor or administrator, until his creditors, who are citizens of this territory, shall have received their just proportions that would be due to them if the whole of the estate of the deceased, wherever found, were divided among all the said creditors in proportion to their respective debts, without preferring any one species of debt to another.

SEC. 23. In such case, no creditor, not being a citizen of this Territory, shall be paid out of the assets found here, until those who are citizens shall have received their just proportions, as provided in the preceding section.

SEC. 24. If there be any residue after such payment to the citizens of this Territory, the same may be paid to any other creditors who shall duly have proved their debts here, in proportion to the amount due to each of them respectively.

SEC. 25. No one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors.

SEC. 26. The balance, if any, may be transmitted to the foreign executor or administrator; or, if there be none such, it shall, after the expiration of three years from the appointment of the administrator, be distributed ratably among all the creditors, citizens, and others, who shall have proved their debts in this Territory.

SEC. 27. Executors and administrators shall be allowed for their trouble not exceeding ten per centum on the whole amount of personal estate, and on the money arising from the sale of lands, with such additional allowance for leasing real estate, and collecting and preserving the estate, as the Probate Court may deem reasonable.

Article VII.—*Of proceedings against Executors, Administrators and Securities.*

Section 1. If, upon the settlement of any executor or administrator, there be not sufficient assets to pay all demands against the estate, any creditor may suggest that he has not made a just account of the assets in his hands, and apply for an inquiry into the same.

Sec. 2. Upon such application the court shall direct an issue to be made up, whether there be waste or not, which shall be tried as demands against an estate.

Sec. 3. If no waste be found, the applicant shall pay the costs, but if waste be found, judgment shall be recorded in favor of the applicant against such executor or administrator of his own proper estate, for the amount wasted, and costs; and the money collected shall be applied to the payment of the debt due to the applicant, and the residue shall be apportioned among the creditors.

Sec. 4. If it appear that such waste was committed wilfully and fraudulently, the applicant shall recover double the amount wasted, with costs to be apportioned as aforesaid.

Sec. 5. After final settlement of any estate said to be insolvent, any creditor, or other person interested therein, may bring an action of waste, or a suit on the administration bond, and assign and prove as a breach of the condition, any waste, or mismanagement of the estate, and have judgment against the executor or administrator for the whole value of the assets wasted or mismanaged, as he could have done if they had been regularly accounted for, with costs.

Sec. 6. Upon such judgment, execution may issue against the private estate of such executor or administrator, and his settlement shall only be conclusive as far as he has applied the assets pursuant to the apportionment made by the court for the payment of debts.

Sec. 7. The proceeds of all executions, on any judgments thus recovered, shall be applied to the payment of the debt due to the person suing, and the residue shall be apportioned among the creditors.

Sec. 8. The bond of any executor or administrator may be sued on, at the instance of any party injured, in the name of the Territory, to the use of such party, for the waste or mismanagement of the estate, or other breach of the condition of such bond, and the damages shall be assessed thereon, as on bonds with collateral conditions.

Sec. 9. The Probate Court, for disobedience to any order made in pursuance of this act, may issue attachment, imprison the body, or proceed by sequestration of land and goods, as fully as a Court of Chancery may do, and may issue their process for that purpose, directed to any county, and cause it to be served therein.

ARTICLE VIII.—*Of Appeals.*

SECTION 1. Appeals shall be allowed from the decision of the Probate Court to the District Court in the following cases: *First*, On all demands against an estate exceeding ten dollars; *Second*, On all settlements of executors and administrators; *Third*, On all apportionments among creditors, legatees, or distributees; *Fourth*, On all orders directing the payment of legacies, making distribution, or making allowances to the widow; *Fifth*, On all orders for the sale of personal estate, because distribution cannot be made in kind; *Sixth*, On all orders for the sale of real estate; *Seventh*, On judgments for waste; *Eighth*, On proceedings to recover balances escheated to the Territory; *Ninth*, On orders revoking letters testamentary or of administration; *Tenth*, On orders making allowances for the expenses of administration; *Eleventh*, On orders for the specific execution of contracts; *Twelfth*, On orders compelling legatees or distributees to refund, and in other cases when there shall be a final decision of any matter arising under the provisions of this act.

SEC. 2. All appeals shall be taken during the term at which the decision complained of is made.

SEC. 3. The applicant for such appeal, his agent, or attorney, shall file an affidavit, that the appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court.

SEC. 4. Every such appellant shall file in the court, the bond of himself or some other person, in a sum, and with security approved by the court, conditioned that he will prosecute the appeal, and pay all debts, damages, and costs, that may be adjudged against him. This act shall not be so construed as to require any executor or administrator to enter into bond in order to entitle him to an appeal.

SEC. 5. After such affidavit and bond have been filed, the appeal shall be granted, but shall not be a *supersedeas* in any other matter to the administration of the estate, except that from which the appeal is specially taken.

SEC. 6. When such appeal is taken, the clerk shall transmit to the clerk of the District Court a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

SEC. 7. Upon the filing of such transcript and papers in the office of the clerk of the District Court, the court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect, or other imperfection in the proceedings of the Probate Court.

SEC. 8. The clerk of the District Court shall certify a transcript of the record and proceedings, and the original papers, to the court whence the appeal was taken, who shall proceed according to the decision of the District Court.

Passed, September 29th, 1849.

FEES AND COSTS.

AN ACT, *to regulate Fees and Costs.*

SEC.
1. What fees to be allowed to officers, &c.
2. Fees of clerks, and items thereof in civil cases.
3. Fees of Probate clerks, and items thereof.
4. Fees of clerks of Supreme and District Courts in criminal cases.
5. Fees of clerks under the acts of naturalization.
6. Fees of Probate clerks acting as clerks of the Board of county commissioners.
7. Fees of the clerk of the county commissioners, when paid out of the county treasury.
8. Fees and compensation of sheriffs.
9. Extra allowance to sheriff—how allowed and paid.
10. Fees of county commissioners.

SEC.
11. Fees of grand and petit jurors, and how paid. Coroner's jury
12. Fees of talesmen, and how paid.
13. Fees of Justices of the Peace.
14. Fees of constables.
15. Fees of coroners.
16. How jury fee taxed, &c., in criminal cases.
17. Extra allowance for district clerk—how allowed and paid.
18. Officers to set up table of fees in their offices—forfeiture for not doing so.
19. Payment of fees may be refused until bill of particulars and receipt be made out, &c. Re-taxation.
20. No ministerial officer to receive fees, unless items be returned on process.
21. Docket fee.
22. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the fees and compensation of the several officers and persons herein named shall be as follows, to wit:

SEC. 2. That the clerks of the Supreme Courts, District Court, and Probate Court, shall be allowed the following fees, in civil cases: For filing *precipe* and issuing a *capias*, attachment, execution, *certiorari*, *supersedeas*, summons, or a writ of replevin, and entering the same, fifty cents; issuing writs of *scire facias*, and *venditioni exponas*, for every hundred words, twenty cents; for entering the appearance of either party personally or by attorney, to be charged but once, fifteen cents; for entering sheriff's return on any writ, ten cents; docketing each cause, to be charged but once, ten cents; docketing appeals from Justices, fifteen cents; filing declaration, plea, demurrer, or bill or answer in chancery, each, fifteen cents; filing every paper, exhibit, or necessary document in the cause, ten cents; issuing *subpœna* in chancery, fifty cents; *subpœna* for witnesses, where there is but one person named therein, twenty-five cents, and for every additional person, ten cents; the writs of *venire* for a jury to be charged, in each cause tried, twenty-five cents; receiving panel, and swearing jury, twenty-five cents; swearing each witness, ten cents; entering claim of such witness for his or her attendance, ten cents; giving order therefor to each witness, ten cents; entering judgment, twenty cents; recording general verdict, twenty cents; special verdict, for every hundred words, twenty cents; for taking special bail, twenty-five cents; for taking and entering recognizance, fifty cents; issuing a bail piece, seventy-five cents; for entering every special rule, fifteen cents; entering every continuance, discontinuance, or retraxit, twenty cents; entering a rule of reference, twenty-five cents; copy thereof, fifty cents; entering an allowance of, and issuing a writ of *habeas corpus*, one dollar; for each writ or process not herein provided for, fifty cents; entering a confession of judgment or consent rule and plea, twenty cents; entering satisfaction of judgment on record, twenty-five cents; making up a record of the process, proceedings, and judgment in each cause, for each hundred words such record may contain, twenty cents; for making out copies of process, pleadings, records, or any proceedings in a cause, when required by either of the parties, or by law, for each hundred words, twenty cents; entering notice of appeal to Supreme or District Court, twenty cents; taking bond on appeal, *certiorari*, or writ of error, fifty cents; entering allowance of writ of error, *certiorari*, or *habeas corpus*, twenty cents; entering every decree in chancery, for each hundred words, twenty cents; for drawing cost bill, after final judgment or decree, fifty cents; for entering an order to advertise, fifty cents.

SEC. 3. That the clerks of the Probate Courts shall be allowed the following fees: For the probate of a will or testament, and entry thereof, seventy-five cents; issuing letters testamentary, or of administration, two dollars; administering an oath to administrators or executors, and taking bond, in each case, one dollar; recording a will or inventory, final settlement of executors, administrators, or guardians, for each hundred words, twenty-five cents; making out copies of writs, inventories, or rules of court, ordered to be furnished executors, administrators, or guardians, for each hundred words, twenty cents; entering appointment of administrators, or executors, or appraisers of property, twenty-five cents; copy of order to appraisers, twenty-five cents; taking bond of any guardian appointed for minors or insane persons, fifty cents; issuing letters of guardianship, or copy thereof, one dollar; for filing an account current and vouchers of an executor, administrator, or guardian, for settlement, and entering the same on the minutes of the court, fifty cents; issuing a citation to administrators, executors, or guardians, fifty cents: *Provided*, In all cases where there are several minors, who may have chosen the same person as guardian, or for whom the same person may have been appointed as guardian at the same time, the clerks shall not be entitled to receive any more, or greater fees, for taking bond or giving certificate, or issuing letters of guardianship, than if there should be one ward only.

SEC. 4. That the clerks of the District Courts, and Supreme

Courts, shall be allowed the following fees in criminal cases: For issuing *capias*, or other process or indictment, fifty cents; entering defendant's appearance or plea, ten cents; *venire* for a jury, fifty cents; receiving panel and swearing jury, twenty-five cents; and for all other services the same fees as are allowed in civil cases for similar services.

SEC. 5. That the clerks of the several courts in this Territory shall, for services under the several acts of Congress upon the subject of naturalization, receive the fees hereinafter specified, and no more: For entering a declaration of intention to become a citizen of the United States, the sum of fifty cents; for a certified copy of such entry under the seal of the court, the sum of one dollar; for entering the final admission of an alien to the rights of citizenship, the sum of fifty cents; for a certified copy thereof under the seal of the court, the sum of one dollar.

SEC. 6. That the several clerks of the Probate Courts in this Territory, acting as clerks of the Board of county commissioners, shall be allowed the following fees and compensation, to be paid out of the county treasury, when not otherwise provided for: For making out original tax duplicate, for every hundred words, and counting every two figures as a word, but excluding calculations not carried into duplicate, twenty-five cents; for each copy thereof, for every hundred words, counting two figures as a word, twenty cents; for recording proceedings of commissioners, and other recording required of him by law, for each hundred words, twenty cents; for each order drawn on the county treasury, ten cents; for filing and entering in a book each receipt for money paid into the county treasury, or other papers necessary to be placed on file, ten cents; for attending as clerk of the county commissioners during the sitting of each regular or special session of said Board, three dollars per diem; for each notice delivered to the sheriff of election, or of the appointment of judges of election, twenty-five cents; for opening and examining the returns of election, and making out the abstract of votes, and the copies thereof, for delegate to Congress, members of the Legislative Assembly, and county officers, three dollars per diem; for each order for view and survey of road, one dollar; for each certificate of election, delivered to members of the Legislative Assembly, or county officer, twenty-five cents; and for all other services required by law, when the compensation is not particularly specified, the same fees as are allowed by this act for similar services.

SEC. 7. The clerk of the county commissioners shall, in all cases where his fees are paid out of the county treasury, be paid on the order of the county commissioners, who shall be satisfied of the correctness of the account rendered by him; and the same shall be authenticated by his oath, and filed with the county treasurer.

SEC. 8. That the fees and compensation of sheriffs shall be as follows, to wit: For the service of every writ of summons and return thereof (subpœnas only excepted), when only one defendant is named therein, sixty cents; for each additional defendant, forty cents; for levying each writ of execution, on real or personal property, or the service of a *capias ad satisfaciendum* upon the body of each defendant named in the writ, sixty cents; for every bail bond, one dollar; for committing to prison, or discharging therefrom, or attending a person before a Judge or court, one dollar; for serving a writ of possession, with the aid of the county, six dollars; for serving such writ, without the aid of the county, two dollars; for executing a writ of inquiry and returning the same with the inquisition, four dollars; for a copy of any writ or process necessary to complete a service, for each hundred words, twenty cents; for serving and returning a *subpœna*, for each person named therein, twenty-five cents; for serving and returning a *venire* for a petit-jury, travelling fees included, to be paid by the county, ten dollars; for summoning a jury, to be allowed on each issue tried, one dollar; for summoning a grand-jury, travelling fees included, to be paid by the county, ten dollars; for summoning a special jury, including travelling fees, six dollars. Travelling fees upon all writs, *precepts*, and *subpœnas*, to be computed from the place of return to the place of service, ten cents per mile. Poundage on all moneys actually made and paid to the sheriffs, on execution, decree, or sale of real estate, four per centum on the first thousand, two per centum on all sums between one thousand and two thousand, and one per centum on all sums over two thousand dollars: *Provided*, That when such real estate shall be bid off, and purchased by the plaintiff in execution, or the complainant in chancery, the sheriff shall not be entitled to any poundage, except on the amount paid over, above the claim of the plaintiff or complainant; service of a declaration in ejectment and return, the same fees as are allowed for the service of a summons, including mileage as herein provided; for making deed of lands sold on execution, decree, or order of court, to be paid by the purchaser, four dollars; for serving and returning a writ of *scire facias*, when only one defendant is named therein, sixty cents, and for each additional defendant, forty cents; serving any person with an order of court, and making a return, sixty cents, and mileage as on service of summons; for calling a jury, twenty-five cents; for opening court and calling each action, to be charged once each term of the court, in which the cause may be pending, twenty-five cents; for calling each witness, ten cents; for bringing up a person on *habeas corpus*, two dollars; for serving a writ of restitution, two dollars, and mileage thereof as in other cases; for serving a summons in forcible entry and detainer, or forcible detainer only, sixty cents, and mileage as in other cases; for all advertisements in a public newspaper, fifty cents, in addition to the price of printing; for all written advertisements for the sale of property, either real or personal, seventy-five cents; for selling real estates under an order of court, when the same will not bear partition, two per centum where the amount of the sale does not exceed two thousand dollars; where the same exceeds two thousand dollars, two per centum on the first two thousand, and one per centum on the amount over and above that sum.

SEC. 9. That the District Court in each county shall make an allowance, of not more than two hundred dollars per annum, for the sheriff, for services where the Territory fails, or the defendants prove insolvent, and for other services, not particularly provided for; the amount to be certified by the court, and paid out of the county treasury.

County Commissioners.

SEC. 10. That each county commissioner shall be allowed three dollars per diem for his services, including mileage at ten cents per mile, to be estimated to and from the seat of justice, and paid out of the county treasury upon the order of the clerk of the county commissioners.

Jurors.

SEC. 11. That each grand and petit-juror shall be allowed the sum of two dollars for each and every day he may serve, and if not a talesman, ten cents per mile from his place of residence to the county seat; and the compensation of such juror shall be certified by the clerk of the court, and the compensation, so certified, shall be paid by the county treasurer, on the order of the clerk of the Board of county commissioners; and to jurors on inquests holden by coroners, each two dollars, to be paid out of the county treasury, on the order of the clerk of county commissioners; who shall be furnished by the coroners with the names of the jurors.

SEC. 12. That each talesman serving as a petit juror in the Probate Court, District Court, or Supreme Court, shall be entitled to the sum of one dollar, for each jury trial on which he may serve: *Provided*, The trial does not detain such talesman more than one day; but in case he is detained more than one day on such trial, he shall receive the same amount per day, as regularly summoned jurors are entiled to receive; whose account shall be audited and paid in the manner prescribed in the preceding section.

Justices of the Peace.

SEC. 13. That Justices of the Peace shall be allowed to receive the following fees: For a *capias* or summons, twenty-five cents; for a warrant in criminal cases, fifty cents; for taking a recognizance of bail, fifty cents; for committing to jail, fifty cents; for every subpœna for one person, twenty-five cents, and each additional person ten cents; for entering judgment on trial, fifty cents; for entering judgment on confession or default, twenty-five cents; for issuing execution, fifty cents; for a certified copy of proceedings on appeal, *certiorari*, or otherwise, seventy-five cents; for every continuance or adjournment, at the request of either party, twenty cents; for entering a rule of reference, or a copy thereof, each, twenty cents; for swearing witnesses, jurors or arbitrators, each, ten cents; for issuing writs of attachment, fifty cents; for *scire facias*, fifty cents; for entering a discontinuance, or satisfaction, twenty cents; for the acknowledgment of a deed or other instrument of writing, with a certificate thereon, fifty cents; for a *venire* for a jury, fifty cents; for a writ of restitution, fifty cents; for taking affidavits, each, fifty cents; for every search-warrant, fifty cents; for marrying and making a return thereof, three dollars; for attending with the clerk of the county commissioners at the opening of the poll books, two dollars per diem.

Constables.

SEC. 14. That constables shall receive the following fees: For serving every summons or other writ (*capias* excepted), and making return thereof for each person named therein, twenty cents; the copy of summons or other process left at the place of abode, twenty-five cents; for the service and return of a *capias* or warrant, fifty cents, and the same mileage as is provided in other cases; for serving an execution on body or goods, fifty cents; for summoning a jury on a dead body, including mileage, two dollars; for committing to prison, fifty cents; for all moneys made on execution, ten per centum; for every day's attendance upon the court, by order of the court, two dollars, to be paid out of the county treasury upon the certificate of the clerk; for every day's attendance upon the grand-jury, two dollars, to be paid as the others.

Coroners.

SEC. 15. That coroners shall be allowed the following fees: For view of a dead body, five dollars, and mileage; for drawing all necessary writings, each hundred words, twenty cents; for issuing *venire*, fifty cents.

Miscellaneous Provisions.

SEC. 16. That in all cases where a jury may be called to try the issue joined, and the defendant or defendants shall be convicted by the judgment, or sentence of the court before whom the same may be tried, there shall be taxed on the bill of costs the sum of twelve dollars, as a jury fee, and judgment shall be rendered therefor against such defendant or defendants, which sum, when collected by the clerk of said court, or the sheriff, to whom execution shall have been issued, shall be paid over to the county treasurer.

SEC. 17. That the District Court in each county shall make an allowance of not more than one hundred dollars per annum for the clerk of said court, for services where the Territory fails, or the defendant proves insolvent, and other services not particularly provided for; and the clerk shall receive a reasonable allowance for blank books, to be paid out of the county treasury.

Sec. 18. That each and every officer whose fees are herein ascertained, limited and appointed, shall, and they are hereby required, to make a fair table of their fees, respectively, according to this act; and to publish and set the same up in their respective offices, within two months after any such officer shall have been elected or appointed, in some conspicuous place, for the inspection of all persons who have business in said office, on pain of forfeiting for each day the same shall be missing through such officer's neglect, the sum of ten dollars; which penalty may be recovered by indictment, for the use of the county where the offence shall have been committed.

Sec. 19. That it shall, and may be lawful, for any person to refuse payment of fees to any officer who will not make out a bill of particulars, signed by him, if required, and also a receipt signed by him for fees paid; and the bill of fees of the officers herein named shall be subject to examination and correction by the several courts.

Sec. 20. That no sheriff, coroner, or constable, shall be enacted to receive, either on *mesne* or final process, any fees provided for in this act, unless he shall return upon the process upon which any charge shall be made, the particular items of such charge.

Sec. 21. That in all suits or actions commenced in the Probate Court, District Court, or Supreme Court, the person recovering judgment shall be entitled to the following docket-fee, to wit: In each and every case where the suit is settled previous to issue being joined, and after the declaration is filed, five dollars; after the trial, ten dollars; which docket-fee shall be taxed in the bill of costs, and be paid to the attorney of record for the successful party, which fee shall be accounted for by said attorney on settlement with his client.

Sec. 22. This act to take effect, and be in force, from and after its passage.

Passed the House of Representatives, January 28th, 1851.
Passed the Council, February 1st, 1851.

FERRIES.

An Act, *regulating Ferries.*

Sec.
1. Probate Court to grant license. Notice of application for license—how given. Who shall have preference.
2. Issuing of license. Bond of applicant—condition of the same, and penalty for breach.
3. Duties of licensed ferrymen—as to boats, &c., place of embarking and landing. Authorized to remove obstructions, &c.
4. Time of attendance. When obliged to ferry after dark—penalty for refusing—how enforced.
5. Probate Court to fix the rates of ferriage—penalty for taking illegal ferriage.

Sec.
6. List of rates to be posted up near the ferry—effect of neglect so to do.
7. Persons to be ferried in the order in which they arrive—penalty for acting otherwise—proviso, as to public officers, &c.
8. Owners of ferries to have exclusive privileges—proviso.
9. When owner of ferry compelled to show cause why license should not be revoked—decision thereon—appeal
10. Annual tax—amount—how levied, &c.
11. Penalty for keeping ferry without license—proviso
12. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That whenever it shall be considered necessary to establish any ferry across any lake, river, creek, or other water course within the limits of this Territory, it shall be the duty of the Probate Court of the proper county, on due application being made by any qualified person or persons; to establish and confirm the same by a special order, to be made for that purpose, under such regulations, restrictions, and forfeitures, as are hereinafter directed and pointed out: *Provided*, That no such application shall avail any such person or persons as aforesaid, unless his, her, or their intention in relation thereto shall have been previously given, by publishing in some public newspaper printed in this Territory, or advertised on the door of the Court House, or on the door of the house where courts are usually held, and in three of the most public places in the county in which such ferry is proposed to be established, for at least four weeks, successively, next preceding the sitting of the court at which the same shall be made: and *Provided further*, That the proprietor or proprietors of the lands adjoining to, or embracing such water course, as aforesaid, over which any such ferry shall be proposed to be established as aforesaid, shall, at all times, have the preference in establishing such ferry, in all cases where application shall be made for that purpose, before such privilege shall be granted to any other person or persons as aforesaid.

Sec. 2. When any ferry shall be established, as aforesaid, it shall be the duty of the court establishing the same, to direct their clerk to issue to the proprietor or proprietors thereof a license, under the seal of such court, to keep such ferry according to law: *Provided*, That every such proprietor or proprietors, to whom any such license may be directed to be issued as aforesaid, shall, before the issuing thereof, pay into the county treasury, or to such person as may be authorized by law to receive the same, the amount of the first year's tax which may be assessed upon such ferry by said court, and specified in the order establishing the same; and enter into bond with one or more good securities, to be approved by the court, in a sum not less than one hundred, nor more than five hundred dollars, payable to the Judges of the Probate Court of the proper county, and their successors in office, for the use of such county, with a condition therein contained, that he, she, or they will keep such ferry according to law; and if default shall at any time be made in the condition of said bond, damages not exceeding the penalties therein mentioned, may be sued for and recovered, in the name of the Judges of the Probate Court, for the use of the county wherein such ferry shall have been established, in any court having competent jurisdiction.

SEC. 3. Every keeper of a ferry shall furnish and keep a good, tight boat, and other small craft of sufficient number, dimensions, strength, and steadiness, for the safe and speedy transportation of all passengers, their teams, horses, cattle, and other animals, as well as their goods, chattels, and effects; and the said boat and other small craft, shall at all times be well furnished with suitable oars, setting poles, and other implements necessary for the service thereof; and also with men of sufficient number, strength, discretion, and skill, to manage the same; and such ferry-keeper shall, at all times, keep the place of embarking and landing in good repair, by cutting away the bank, and erecting wharves and causeways when necessary; so that passengers, their teams, horses, cattle, and other property, may be embarked and landed without danger or unnecessary delay: and in order to enable them to do so, they are hereby authorized to remove any obstruction placed in the way of such ferry, or its landings, by any person or persons; and such person or persons so obstructing such ferry, or its landings, shall pay all expense in removing the same, and shall moreover be liable for all damage sustained by any person, on account of such obstruction, which may be sued for and recovered before any court of competent jurisdiction.

SEC. 4. Every keeper of a ferry as aforesaid, shall give constant and diligent attention to the same, from daylight in the morning until dark in the evening of each day; and shall be obliged, at any hour of the night, if required, except in cases of evident danger, to give passage to all persons requiring the same, on their paying or tendering double the rate of ferriage allowed to be taken during the day time; and if any such keeper of a ferry shall at any time neglect or refuse to give passage to such person or persons, or their property as aforesaid, he or she so offending shall forfeit and pay five dollars for every such offence, to the party aggrieved, to be recovered before any Justice of the Peace of the county wherein such offence shall be committed; and shall also be liable to an *action on the case* for any special damage which any such person may sustain in consequence of such neglect or refusal; but no ferryman shall be required to put off from shore, or to attempt to pass any such water course as aforesaid, when it manifestly appears to be hazardous so to do, by reason of any flood, storm, tempest, or ice; nor shall any keeper of a ferry be compelled to give passage to any person or persons, or to his or their property as aforesaid, until the fare or toll properly chargeable by such keeper, shall have been fully paid or tendered to such ferryman.

SEC. 5. The Probate Courts, in their respective counties, are authorized and required to fix, from time to time, the rates of ferriage which each keeper of any ferry shall hereafter demand, for the passage of all persons, wagons, carts, carriages, horses, cattle, sheep, hogs, and other property: having due regard to the breadth and situation of the stream or water course over which such ferry shall be established, the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every such keeper of a ferry who shall, at any time, demand and take more than the fare so stated and allowed as aforesaid, shall forfeit and pay to the party aggrieved, for every such offence, the sum of five dollars, over and above the amount which shall be thus illegally demanded and taken, to be recovered before any Justice of the Peace of the county wherein such offence shall be committed.

SEC. 6. Each keeper of a ferry shall be required to set or post up, in some conspicuous place, immediately adjoining his or her ferry landing, a printed or written list of the several rates or fares which shall be chargeable at such ferry, so that the same shall not exceed those which shall, from time to time, be allowed by law; which lists of fares or rates as aforesaid, shall, at all times, be printed, or written in a plain, legible manner, and posted up so near the place or places where persons shall pass across such ferry, that the same shall be open and legible to all passengers; and if, at any time, any such keeper of a ferry shall refuse, or neglect to put and keep up such list of rates as aforesaid, it shall not be lawful to charge, or take any ferriage, or compensation whatever, at any such ferry, during the time of such delinquency.

SEC. 7. All persons shall be received into such ferry-boats, or other crafts as aforesaid, and conveyed across the water course over which the same shall be established, according to their arrival or first coming to the said ferry; and if any ferry-keeper shall act contrary to this regulation, he shall forfeit and pay the sum of three dollars for every such offence to the party aggrieved, recoverable before any Justice of the Peace of the county wherein such offence shall have been committed: *Provided*, That all public officers, or such as go on public or urgent occasions, as post-riders, couriers, physicians, surgeons, and midwives, shall, in all cases, be the first carried over, where all cannot go at the same time.

SEC. 8. The owner or owners, keeper or keepers of all ferries established and kept according to the provisions of this act, shall have the exclusive privilege of the transportation or passage of all persons, their teams, horses, cattle, and other property over and across the same, and be entitled to all the fare arising by law therefrom: *Provided*, That nothing herein contained shall be construed to prevent any person or persons from crossing any stream or water course over which any such ferry shall be established as aforesaid, in his or her own boat or other craft, on his or her own business; and also, to take in and cross over his neighbors, where the same is done without fee, and not with intention to injure any ferryman near.

SEC. 9. If any ferry established, or to be established under this act, shall not be furnished with a sufficient boat, and other necessary crafts, with the necessary oars, setting poles, and other implements for the service thereof, and also with a sufficient number of able and skilful ferrymen, as is provided for in the third section of this act, within three months from the establishment thereof; or if any such ferry at any time hereafter shall not be kept in good condition and repair, agreeable to the provisions of this act; or if the same shall, at any time, be abandoned, disused, or unfrequented, for the space of six months, at any one time; it shall and may be lawful for the Probate Court of the proper county, on complaint being made, to summon the proprietor or proprietors of such ferry, to show cause why the same should not be discontinued, and their license revoked, and decide thereon according to the testimony adduced, and as shall be agreeable to equity and justice; which decision, when made, shall be valid in law, to all intents and purposes, but subject to an appeal to the District Court, as in other cases.

SEC. 10. All ferries which may be established under the provisions of this act, shall be subject to an annual tax of not less than one, nor more than two hundred dollars, in the discretion of the Probate Court of the county in which the same shall be located; which tax, when assessed, shall be collected and paid over as other taxes are, and shall constitute a part of the county revenue.

SEC. 11. No person shall establish, keep, or use any ferry for the conveyance or passage of persons and their property as aforesaid, for profit or hire, unless he or she shall be licensed as directed by this act, under the penalty of ten dollars for each offence, recoverable before any Justice of the Peace of the county wherein such offence shall be committed: *Provided*, That it shall not be considered illegal for any person or persons to pass any person, or his property, in cases where it shall be made to appear that such established ferry was not, at the time, in actual operation, or in sufficient repair to have afforded to such person, or his property, a safe and speedy passage.

SEC. 12. This act to take effect and be in force, from and after its passage.

Passed, September 27th, 1849.

GROCERY LICENSE.

An Act, *regulating Grocery License.*

Sec.
1. Probate Court to grant license. Bond of applicant, condition of.
2. License not to extend to more than one place.

Sec.
3. Grocery, definition of.
4. Penalty for selling liquor without license.
5. County officers to make complaint.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person wishing to obtain a license to keep a grocery, shall apply to the Probate Court of the proper county, who shall issue a warrant directing the person so applying, to pay into the county treasury a sum not exceeding five hundred dollars, nor less than two hundred dollars, as the case may be, in the discretion of the court, and obtain the treasurer's receipt for the same; and upon presentation of such receipt, the court shall grant to such applicant a license to keep a grocery in said county, for the term of one year, by the applicant executing a bond to the said court, in the penalty of eight hundred dollars, with one or more sufficient securities, conditioned that he will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in or about his house; and upon a violation of the requisition herein contained, the person so offending shall pay a fine of not less than fifty dollars, nor more than five hundred dollars, for the use of the county in which the offence was committed, to be recovered by law as debts are recovered.

Sec. 2. License granted to keep a grocery shall not authorize the person obtaining such license to vend or sell spirituous, or vinous liquors, in more than one place or house at the same time.

Sec. 3. A grocery shall be deemed to include any house, or place where spirituous or vinous liquors are retailed by less quantities than one quart.

Sec. 4. If any person shall sell or retail any spirituous, or vinous liquors, in less quantity or quantities than one quart, without first having obtained a license agreeably to this act, he shall, upon conviction thereof, be fined in any sum not exceeding dollars, for the use of the county where the offence shall have been committed, to be recovered by motion in any Court of Record having cognizance thereof.

Sec. 5. And it is hereby made the duty of all county officers, knowing of any violation of the foregoing regulations of this act, to make complaint thereof to the grand-jury, at the next session of the District Court after such violation, and of the clerk of the Probate Court, county treasurer, to sue on the bond for any violation of its conditions.

Passed, September 27th, 1849.

* * *

AN ACT, *to amend an Act regulating Grocery Licenses, passed September 27th,* A. D. 1849.

(192)

SEC.
1. Fine for selling liquor without license. How recovered.
2. When this act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That if any person shall sell or retail spirituous, or vinous liquors, in less quantity or quantities than one quart, without first having obtained a license agreeably to the act to which this is an amendment, such person shall, upon conviction thereof, be fined in any sum not exceeding four hundred dollars, for the use of the county wherein the offence was committed, to be recovered by motion of any Court of Record having cognizance thereof.

SEC. 2. This act to take effect, from and after the first day of April next.

Passed the Council, February 6th, 1851.
Passed the House of Representatives, February 6th, 1851.

JUDICIAL DISTRICTS.

AN ACT, *to lay out the Judicial Districts of Oregon Territory.*

(193)

SEC.
1. When and where Supreme Court to meet.
2. Number of judicial districts in the Territory.
3. First judicial district. What counties.
4. Second judicial district. What counties.
5. Third judicial district. What counties.
6. Number of terms in each county in each year.
7. When courts to be held in first judicial district.
8. When courts to be held in second judicial district.
9. When courts to be held in third judicial district.
10. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the session of the Supreme Court shall convene on the first Monday in December in each year, at the seat of government.

SEC. 2. That this Territory is divided into three judicial districts.

SEC. 3. The first judicial district shall consist of the counties of Clackamas, Marion, and Linn.

SEC. 4. The second judicial district shall consist of the counties of Benton, Polk, Yamhill, and Washington.

SEC. 5. The third judicial district shall consist of the counties of Clark, Clatsop, and Lewis.

SEC. 6. Two terms of the District Court shall be held in each county, in every year.

SEC. 7. The District Courts in and for the county of Clackamas, shall be held on the first Monday in March and September; for the county of Marion, on the second Monday in March and September; for the county of Linn, on the third Monday in March and September.

SEC. 8. The District Court within and for the county of Benton shall be held on the fourth Monday of March and September; for the county of Polk, on the first Monday in April and October; for the county of Yamhill, on the second Monday in April and October; and for the county of Washington on the third Monday in April and October.

SEC. 9. That the District Courts within and for the third judicial district, shall be held for the times following, to wit: For the county of Clark, on the fourth Monday in April and October; for the county of Lewis, on the second Monday in May and November; and for the county of Clatsop on the fourth Monday of May and November.

SEC. 10. This act shall take effect, and be in force from and after its passage.

Passed, July 25th, 1849.

AN ACT, *to amend the Act, entitled "An Act to lay out the Judicial Districts of Oregon Territory," passed July* 25, 1849.

(194)

SEC.
1. Lane county. Number of courts. When held.

SEC.
2. Umpqua county. Number of courts. When held.
3. Act repealed. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of Oregon Territory*, That the county of Lane shall be, and hereby is attached to the first judicial district, and that hereafter there shall be held in said county, two terms of the District Court in each year; one upon the first Monday in April, the other upon the first Monday in October.

SEC. 2. That the county of Umpqua shall be, and hereby is attached to the second judicial district, and that hereafter, there shall be held in said county two terms of the District Court, in each year; one upon the first Monday in May, and the other upon the first Monday in September.

SEC. 3. That an act entitled "An Act to change the day of the commencement of the session of the District Court," passed September the 29th, 1849, be, and the same is hereby repealed.

SEC. 4. This act to take effect, and be in force from and after its passage.

Passed the House of Representatives, February 5th, 1851.
Passed the Council, February 6th, 1851.

JURIES.

AN ACT, *to regulate Juries, and the mode of selecting them.*

(195)

SEC.
1. Who shall serve as jurors, and who shall be exempt.
2. Grand-jury selected by county commissioners. Their number. Summons—how and when served.
3 Foreman of grand-jury—his powers and duties. Indictments, &c.
4. Oath of grand-jury.
5. Oath of petit jury in criminal cases
6. Two grand-jurors necessary in making presentment.
7. Petit jurors selected by county commissioners. Their number. Summons—how, and when served.
8. Manner of selecting petit jury.

SEC.
9. Duty of sheriff in selecting jury, and penalty for neglect.
10. Manner of filling vacancies in jury occasioned by the non-attendance of persons first selected.
11. Fine of grand and petit jurors for non-attendance, unless good cause shown against it.
12. Sickness or death of jurors provided for.
13. Compensation of jurors. How and by whom paid.
14. Jurors privileged from arrest, except in certain cases.
15. Duty of county commissioners in selecting juries.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all persons who are qualified electors in this Territory, shall be liable to serve as jurors in their respective counties as hereinafter provided. The following persons shall be exempt from serving as jurors, to wit: The Governor, secretary of the Territory, Judges of the Supreme and District Courts, county commissioners, county treasurers, clerks of the Supreme and District Courts, county auditors, Judges of Probate, sheriffs and deputy sheriffs, coroners, constables; the marshal of the United States, and his deputies; persons holding office under the Government of the United States; members of the Legislative Assembly of the Territory of Oregon; ferrymen and mail carriers; counsellors and attorneys-at-law; ministers of the gospel, officers of colleges (not including trustees or directors thereof), and preceptors and teachers of incorporated academies or universities, and one teacher in each common school; practising physicians and surgeons; millers in grist mills, and all persons more than sixty years of age, together with all persons not of sound mind or discretion, and subject to any bodily infirmity amounting to any disability; and all persons shall be disqualified from serving as jurors who have been convicted of any infamous crime, and all persons addicted to habitual drunkenness.

SEC. 2. That it shall be the duty of the county commissioners, in each of the counties of this Territory, wherein a District Court is directed to be held, at least thirty days previous to the sitting of said court, to select twenty-three persons possessing the qualifications aforesaid, in their respective counties, and to deliver an attested copy of the names so selected, within three days thereafter, to the clerk of the District Court of the proper county; who shall thereupon issue and deliver to the sheriff of the county, a *venire* or summons under the seal of the court, commanding him to summon the persons so selected as aforesaid, to appear before the said court at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand-jurors, any sixteen of whom shall be sufficient to constitute a grand-jury; which said summons shall be served at least five days previous to the sitting of said court, either by reading it to the person to be summoned, or by leaving an attested copy thereof at his usual place of residence.

SEC. 3. After the grand-jury is impanneled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm all witnesses to testify before said grand-jury; and whose duty it shall be, when the grand-jury, or any twelve of them, shall find a bill of indictment to be supported by good and sufficient evidence, to endorse thereon "*A true bill*," and when they do not find a bill to be supported by sufficient evidence, to endorse there, "*Not a true bill*;" and it shall, in either case, be signed by the foreman at the foot of the endorsement, and shall in all cases where a true bill is returned into court as aforesaid, note thereon the name or names of the witnesses upon whose evidence the same was found.

SEC. 4. That the oath of the grand-jury, in all cases, shall be as follows, to wit: "You, as grand-jurors for the body of the county of ——— (as the case may be), do solemnly swear, (or, affirm,) that you will diligently inquire into, and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, your own counsel and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice; neither will you leave any person unpresented through fear, favor, or affection, or hope of reward; but that you will present things truly, as they come to your knowledge, according to the best of your understanding, and according to the laws of this Territory. So help you God."

SEC. 5. That the oath or affirmation of petit jurors in criminal cases shall be as follows, to wit: "You solemnly swear, (or, affirm,) without respect to person, or favor, or fear, you will well and truly try, and true deliverance make, between the United States of America, or the Territory of Oregon (as the case may be), and the prisoner at the bar, whom you shall have in charge, according to the evidence, and the laws of this Territory. So help you God."

SEC. 6. No grand-jury shall make presentment upon their own knowledge upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness; in which case, if the evidence is deemed sufficient, an indictment may be found thereon, as upon the evidence of any other witness, who may not be of the jury.

SEC. 7. It shall be the duty of the Board of county commissioners in each of the organized counties of this Territory, where a District Court is directed to be held, at least thirty days previous to the sitting of the said court, to select twenty-four persons possessing the qualifications of jurors, who shall compose and constitute two full petit juries, to serve as such at the next succeeding term of the District Court, in each county respectively, to be summoned in like manner as hereinbefore directed in the case of grand-juries.

SEC. 8. It shall be the duty of the clerk of the District Court, at the commencement of each term, to write the name of each petit juror on a separate ticket, and put the whole into a box, or other place for safe keeping; and as often as it may be necessary to impannel a jury, the clerk shall, in presence of the court, draw by chance twelve names out of such box, which shall designate the twelve to be sworn on the jury, and in the same manner for each subsequent jury, in their turn, as the court may, from time to time, direct.

SEC. 9. In all cases where the sheriff or other officer shall be commanded to execute any summons, as aforesaid, he shall be required to make timely return thereof to the clerk who may have issued the same, with an endorsement thereon certifying on whom it has been served, the time when, and in what manner; and in default of so doing, such sheriff or other officer shall be considered as being guilty of a contempt, and may be fined for the use of the proper county, in every sum not less than two nor more than fifty dollars; unless such sheriff, or other officer, shall make his excuse to the satisfaction and acceptance of the court.

SEC. 10. If a sufficient number of grand or petit jurors do not appear when selected and summoned, as aforesaid; or if by challenges, or any other cause, there shall not appear a sufficient number of qualified persons to make up the panel; the court may order the sheriff to return, without delay, such number of good and lawful men of the county, as may be necessary for that purpose; and when the sheriff is interested or related to either of the parties, the court may direct the coroner, or any constable of the county to make such return; and if any District Court shall, at any time, sit before the Board of county commissioners shall have made a selection of grand or petit jurors, as aforesaid; or if on any account the whole panel, in either case, shall fail to attend, the court may order the sheriff, or other officer, to summon from the bystanders, being qualified persons as aforesaid, a sufficient number to supply such deficiency, who shall continue to serve the remainder of the term, unless they shall be sooner discharged by the court.

SEC. 11. Every person who shall fail to appear when lawfully summoned as a grand or petit juror, as aforesaid, without having a reasonable excuse, shall be considered as being guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars, for the use of the proper county, unless good cause be shown for such default, at or before the next term of said court; and it shall be the duty of the clerk to issue a summons against such delinquent, when such person shall not come in without process, to show cause at the next succeeding term of the said court, why he or they should not be fined for such contempt: *Provided*, That the oath or affirmation of any such delinquent shall at all times be received as evidence in his favor.

SEC. 12. In case of the death, sickness, or non-attendance of any grand or petit juror, after he shall have been sworn upon the jury, or where any such juror, being sworn as aforesaid, shall, for any reasonable cause, be dismissed or discharged, it shall be lawful for the court to cause others, if necessary, to be summoned, and sworn in his or their stead.

SEC. 13. It shall be the duty of the clerk of the District Court, at the end of each term of said court, or within ten days thereafter, to make out a certificate to each juror, certifying the number of days, and amount of compensation due to each juror, which certificate shall be presented to the Board of county commissioners, and allowed as other demands against said county: *Provided*, That no juror shall be paid out of the county treasury for any day's attendance as a juror in the District Court of the Territory, for which he may have received, or be entitled to receive pay as a juror of the District Court of the United States.

SEC. 14. All grand and petit jurors shall be privileged from arrest in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going to and returning from the same; and all arrests in such cases, shall be deemed as illegal and void: *Provided*, That when any grand-jury shall make presentment of one of their own body, he shall be liable to be proceeded against in the usual form.

SEC. 15. It shall be the duty of the Board of county commissioners to arrange and select the grand and petit jurors as aforesaid, in such manner as to make the qualified persons of the county perform duties as jurors as nearly as may be, in rotation, and so that the same may not be unnecessarily burdensome to any of the citizens of the county, according to the best information that the said commissioners can obtain.

Passed the House of Representatives, December 18th, 1850.
Passed the Council, January 1st, 1851.

JUSTICES OF THE PEACE.

(196)

AN ACT, *to amend an Act entitled, "An Act regulating the election, powers, and duties of Justices of the Peace."*

SEC.
1. Number of Justices and constables in precinct. How elected.
2. County commissioners to determine the number in precinct.

SEC.
3. Jurisdiction of Justices of the Peace.
4. When to be in force.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That each election precinct in any county in this Territory, already laid off, or which may hereafter be laid off, shall be entitled to at least one Justice of the Peace, and one constable, who shall be elected by the qualified voters of the precinct in which such Justice and constable are to be elected.

SEC. 2. That it shall be the duty of the Board of county commissioners, whenever they shall lay off any election precinct, to determine the number of Justices of the Peace and constables to which such precinct shall be entitled, not less than one, nor more than two Justices and two constables for each precinct.

SEC. 3. That the jurisdiction of Justices of the Peace, shall be one hundred dollars, in all cases provided for in the twenty-seventh section of the first article, the first section of the tenth article, and the first section of the eleventh article of the act to which this is an amendment; and they are hereby authorized to hear, try and determine all such cases according to law, when the amount does not exceed the said sum of one hundred dollars.

SEC. 4. This act to take effect, and be in force, from and after its passage.

Passed the Council, January 23d, 1851.
Passed the House of Representatives, January 25th, 1851.

LAND CLAIMS.

AN ACT, *to provide for recording Land Claims.*

(197)

SEC.
1. Clerks of the District Court to record claims, until, &c. Fees for the same
2. When no clerk in the county, claimant to record his claim in the next county.

SEC.
3. Office of territorial recorder abolished. Records of office to be filed with the secretary of the Territory.
4. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That it is hereby made the duty of the clerks of the District Courts of the several counties in this Territory, to record land claims, until the clerks of the Probate Courts are elected and qualified; and that they shall receive the sum of fifty cents for recording, and fifty cents for the certificate of record.

SEC. 2. *And be it further enacted*, That in all cases where there is no clerk of a District Court in any county, the claimant shall be permitted to record his claim in the next nearest county where there is a clerk of said court; and such recording shall be good and valid in law.

SEC. 3. That the office of a territorial recorder, be, and the same is hereby repealed; and it shall be the duty of the territorial recorder, or any other person having the same in his possession, to file the records and papers pertaining to his office, in the office of the secretary of the Territory.

SEC. 4. This act to take effect and be in force, from and after its passage.

Passed, 26th September, 1849.

LIBRARIAN.

(198)

AN ACT, *to provide for the appointment of a Librarian, and defining his duties.*

SEC.
1. Appointment. Bond and oath.
2. To have care of library.
3. To provide a room.
4. Who may have access to the library.
5. No person to remove books, except.
6. Who may introduce strangers into library, &c.
7. Assistant librarian.

SEC.
8. Library to be kept open—when.
9. Librarian to report. Expenses—how paid.
10. Compensation of librarian.
11. Governor and librarian may make other rules.
12. Suits.
13. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That a Librarian shall be annually elected by the Legislative Assembly of the Territory of Oregon; that said librarian shall give bond to the secretary of the Territory in the sum of five thousand dollars, for the faithful performance of his duties; and he shall take an oath impartially and faithfully to perform the said duties of librarian; which, together with a certificate thereof, shall be endorsed on said bond.

SEC. 2. He shall have the custody, charge, safe-keeping, management, and direction of all books, papers, maps, charts, engravings, paintings, and all other things, of whatsoever nature, properly belonging to the library, and shall take especial care that none of them be lost or injured.

SEC. 3. He shall provide, at the seat of government, and as convenient as possible to the house occupied by the Legislative

Assembly, a proper room for the safe-keeping of the territorial library, and all things belonging or appertaining thereto, which shall be intrusted to his care.

SEC. 4. Members of the Legislature, and its clerks and officers; Judges of the Supreme and District Courts, and their clerks; attorney-general and marshal of the Territory; attorneys-at-law, secretary of the Territory; and all other persons, shall have access to the library, and the privileges allowed by law.

SEC. 5. No person shall be allowed to remove a book from the library, except such persons as are provided for by the act of Congress organizing this Territory, and they shall not be allowed to keep a book out of the library more than two days at any one time.

SEC. 6. The persons entitled to the use of books in the library, may introduce citizens or strangers into the library, who shall have the privilege, during all seasonable hours, to read of the books therein, not required for the use of such privileged persons.

SEC. 7. The librarian shall have authority to appoint an assistant librarian, who may perform the duties assigned the librarian, and for whose acts the librarian shall be personally responsible.

SEC. 8. The library shall be kept open during the session of the Legislature and Supreme Courts, from the hours of nine to twelve, M., and at other times during ordinary business hours.

SEC. 9. He shall, previous to the close of every session, report to the Legislative Assembly a true account of all expenses incurred during the session, and since the adjournment of the next preceding session, for rent of room, fuel, stationery, candles, and other necessary incidental expenses, which shall be paid out of any money appropriated by Congress to defray the expenses of the Legislative Assembly.

SEC. 10. The librarian shall annually receive for his services the sum of two hundred and fifty dollars, payable quarterly by the secretary of the Territory, out of the fund appropriated by Congress, for the expense of the Legislative Assembly.

SEC. 11. Such other rules not inconsistent with this act, as may be necessary for the safe keeping and good management of the library, may be adopted by the Governor and librarian, kept, together with a catalogue of the books in the library, for the inspection of those concerned.

SEC. 12. The librarian shall carry this act into execution, and sue for all penalties, and for all injuries done to the library, under this act, in the name of the Territory, for the use of the library.

SEC. 13. This act to be in force from and after its passage.

Passed the Council, February 1st, 1851.
Passed the House of Representatives, February 4th, 1851.

LIENS.

AN ACT, *for enforcing the Liens of Mechanics and others in certain cases.*

ART.
I. Of the liens of mechanics and others on buildings.
II. Of liens upon boats and other vessels for construction, repairs, and supplies.
III. Of liens of artisans, mechanics, tradesmen, and builders, in certain cases.

ARTICLE I.—*Of the Liens of Mechanics and others on Buildings.*

SEC.
1. Mechanics, &c., may have lien.
2. Lien only enforced against the owner.
3. Remedy of sub contractor, &c.
4. Set-off in favor of owner, &c
5. Notice of lien to be recorded.
6. How lien enforced.
7. Who may join in the bill
8. Answers, how and when filed
9. Cross bills not necessary.
10. Trial, continuance, filing answers, &c., after a default.
11. Proof of claims, when made.
12. Issue and jury. Sale decreed Payment of claims
13. Interest
14 Surplus paid to owner.
15. Defendant may release his property by giving bond, &c.

SECTION 1. Carpenters, joiners, brick and stone masons, plasterers, turners, painters, brickmakers, lumber merchants, and all others performing labor, or furnishing materials for the construction or repair of any building, shall, and may have a lien separately or jointly, upon the building or buildings which they may have constructed or repaired, or for which they may have furnished materials, of any description, to the extent of the value of any labor done or materials furnished, or for both, where the amount shall exceed thirty dollars.

SEC. 2. The provisions of this article shall only extend to work done, or materials furnished, on new buildings, or to contracts entered into with the owner of any building for repairs, and not to any contract made with the tenant.

SEC. 3. Any sub-contractor, journeyman, or laborer, who may be employed in the construction or repairing of any building, or in furnishing any materials for the same, may give to the owner or owners of the building, or buildings, on which he may have worked, notice in writing, particularly setting forth the amount of his claim, and the service rendered, for which his employer is indebted to him, and that he holds said owner responsible for the same, and the owner of the building is hereby made liable for the amount so claimed, if indebted to the employer to the amount; if not, then to the amount due from him to said employer at the time such notice was served, which may be recovered in an action of assumpsit.

SEC. 4. When any laborer, journeyman, or sub-contractor, shall require any such lien, the same may be set off by the owner of the building, or other person liable for the payment of the erection or repair thereof, in any action brought against him, by the person who otherwise is entitled to recover the same under the contract.

SEC. 5. Any person wishing to avail himself of the provisions of this article, whether his claim is due or not, shall file in the recorder's office of the county, at any time before the expiration of sixty days after the completion of the building or repairs, in this article specified, notice of his intention to hold a lien upon the property declared by this article liable to such lien, for the amount due, or to become due to him, specifically setting forth the amount claimed; and the recorder is hereby required to record such notice as soon as presented, for which he shall be entitled to receive twenty-five cents.

SEC. 6. Any person or persons having a lien under this article, may enforce the same by filing a bill in chancery, in the District Court of the county where the work was done, or materials furnished, at any time within one year from the completion of the work, or furnishing the materials; or if a credit be given, from the expiration of such credit.

SEC. 7. All the persons having a lien, may join in the bill against the employer; or one or more of them may file a bill against the employer, and the other persons having a lien, each claim shall be clearly and distinctly stated, and as clear and distinct an answer shall be made to the same.

SEC. 8. Immediately on the service of process in any suit instituted under the provisions of this article, any defendant or defendants shall have the right to file with the clerk of the county where suit has been instituted, his or their answer, under oath; and the clerk shall endorse thereon the time of filing the same, and ten days shall be allowed the defendant or defendants to file their answer after the service of process.

SEC. 9. It shall not be necessary for a defendant claiming a lien or relief against any complainant or co-defendant, to make his answer a cross bill against the complainant, or any co-defendants; but the assertion of his claim and lien in his answer, with a prayer for the appropriate or general relief, shall be sufficient to authorize the court to enter the proper decree for relief against any of the complainants or defendants.

SEC. 10. If process has been served ten days, the cause shall stand for trial at the first term thereafter; if not, then at the first subsequent term, unless the parties agree to go into trial at the previous term. The court may, for good cause shown, permit a continuance of any or all the claims in controversy, and the defendant or defendants, after default, may file his or their answers, at any time before the trial of the cause, on such terms as the court may deem equitable.

SEC. 11. Any person claiming a lien at any term after process shall have been served ten days on the person whose property is liable to such lien, may proceed to the proof of his claim; and if such person be a defendant to the bill in such case, he may proceed to such proof immediately on filing his answer, if process has been served ten days before the term, as before required.

Sec. 12. The court on application of either party, may direct an issue to be made, and a jury called to try the same, as in cases at law; and when the claims of the parties entitled to recover shall be ascertained, the court shall render a decree for the amount of each claim respectively, against the owner of the building, and direct the house and interest of the employer in the lot, to be sold on a credit of not exceeding six months, the payments to be made in such instalments as the court may direct, taking into consideration the interest of the parties; and the officer collecting the proceeds of such sale, shall pay over the same to the persons entitled thereto respectively, under the direction and order of the court.

Sec. 13. The amount due the claimants, shall bear legal interest from the time the same shall have become due by the contract of the parties, and the purchaser of the property shall pay interest on the purchase money from the time of the sale.

Sec. 14. The court, after all the claimants have been paid, shall direct the surplus, if any, to be paid over to the owner of the property; and should the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount respectively due to each.

Sec. 15. In all proceedings commenced under this article, the defendant may file a bond with surety, to be approved by the court, conditioned for the payment of the amount which may be found due, in payments, the longest of which shall not exceed six months, as the court may order, and release his property from the lien hereby created.

Article II.—*Of Liens upon Boats and other Vessels for construction, repairs, and supplies.*

Sec.

1. Liens upon boats and vessels.
2. Attachment.
3. Creditors may join, &c. Judgment and execution.
4. Justice may certify cause to District Court if demand exceed his jurisdiction.
5. Boat or vessel released if bond be given, &c.
6. Lien in case of articles furnished after vessel has started on her voyage, &c.

Sec.

7. Process, how served in certain cases.
8. Lien of laborers, &c. If enforced, shall be a set-off, &c.
9. Penalty for resisting service of attachment.
10. Action for penalty.
11. Boatmen and mariners.
12. If freight not delivered, &c, owner or consignee may proceed under this article.

Section 1. Boats and vessels of all descriptions, built, repaired, or equipped within the jurisdiction of this Territory, and all boats and other vessels, built, repaired, or equipped by citizens of this Territory, without the jurisdiction thereof, which shall afterwards come within such jurisdiction, shall be liable for all debts contracted by the master, or owner, or consignee thereof, on account of work done, and supplies or materials furnished by the tradesmen, mechanics, or others, for, on account of, or towards the building, repairing, fitting, furnishing, or equipping such boats or vessels; and the debts so contracted, shall be a lien on such boats or vessels, their tackle, apparel, and furniture, and shall have preference to any and all debts due from the owners, masters, or consignees thereof, except mariners' and boatmen's wages.

SEC. 2. If the person having such demand against such boat or vessel, shall file a statement of his claim, annexing thereto an affidavit that such claim is justly due and owing, with any Justice of the Peace of any county in which such boat may be, if such demand do not exceed one hundred dollars; or with the clerk of the District Court of such county; he may have a warrant of attachment issued by such Justice or clerk, directing the seizure and detention of such boat or vessel, and the tackle, apparel, and furniture thereof, by the sheriff or constable, to whom such writ may be directed, until the final determination of the proceedings under such attachment, and until payment be made of such demand, if judgment be rendered in favor of such claimant, and such attachment shall be returned before such Justice, or to the office of such clerk, forthwith after the service thereof.

SEC. 3. Upon the return of such warrant, all or any of the persons having demands of the description before mentioned, may join in a declaration against such boat or vessel, briefly setting forth their demands for work done, or materials furnished, and whether, at the request of the owner, master, or consignee of such boat or vessel, and averring demand and refusal of payment, to which declaration shall be annexed the particulars of the demand, and proceedings shall be had, and judgment rendered as in other cases; and upon such judgment execution may issue, and such boat or vessel, and tackle, apparel, and furniture, or so much thereof as shall be necessary, may be sold under such execution.

SEC. 4. If, in any case, all the demands exhibited before any Justice of the Peace upon any such warrant returned before him, shall exceed the extent of his jurisdiction, he shall certify the proceedings to the District Court of his county, where the same shall be conducted as if originally commenced in said court.

SEC. 5. If the master, owner, or consignee shall, before final judgment, give bond and surety, to be approved of by the clerk or Justice who may have issued such warrant, conditioned to satisfy and pay all the demands pending against such boat or vessel, which shall be adjudged to be due and owing on the determination of such cause; or if he then pay the said demands, together with the costs of the proceedings, such boat or vessel shall thereupon be discharged from such arrest and detention.

SEC. 6. After a boat or vessel of any description shall have been started on her voyage, if any person shall sell to the captain, commandant, master, consignee, or any officer of said boat or vessel, material for her repair, or equipment, or wood or coal for fuel, or provisions to be made use of by the crew or passengers during said voyage, or any articles not being freight or cargo, and which are designed merely to enable said boat or vessel to prosecute her voyage from port to port, said person making affidavit of the truth and justice of his demand, shall have the same remedy, and obtain judgment, and have execution in the same manner as above provided by the provisions of this article.

SEC. 7. It shall not be necessary to serve the process upon the officer or consignee with whom the contract was made, in order to obtain judgment in cases arising under this article, if due diligence has been used by the officer having the process, to execute the same on such officer or consignee without being able to effect it; but in such case, service upon the clerk or any other officer of said boat, if said clerk cannot be found; or in case that cannot be done, service by a copy left or affixed in some place in said boat or vessel, easy to be seen, shall be sufficient service to authorize judgment.

SEC. 8. When any person having a lien upon any boat or vessel is a journeyman, laborer, or sub-contractor, and he shall enforce his lien, and recover therefor; such recovery shall bar and discharge so much of the lien which any person employing such laborer, journeyman, or sub-contractor might otherwise have had on such boat or vessel.

SEC. 9. If any person shall prevent, resist, or obstruct the execution of any process contemplated by the provisions of this article; or shall prevent, obstruct, or resist any process which may be served on any boat, or vessel, or water craft, or any officer, or person who may be aboard such boat, or vessel, or water craft; said person shall be liable in an action of debt to any person who will sue for the same in one year from the time such cause of action shall accrue.

SEC. 10. Such action may be brought before any Justice of the Peace, in any township and county in the Territory where the person or persons so offending may be found; and the person who shall thus sue shall not recover less if judgment be obtained in his favor, before a Justice of the Peace, than ten dollars, nor more than one hundred dollars; and if he sue in the District Court, not less than ten dollars, nor more than five hundred dollars, together with costs of suit.

SEC. 11. Boatmen and mariners for their wages may proceed under the provisions of this article, and shall be entitled to all the benefits thereof.

SEC. 12. Whenever any steamboat or other vessel, having on board freight to be delivered at any landing-place in this Territory, shall attempt to pass the place of delivery without delivering such freight, the owner or consignee thereof, may sue out an attachment against said steamboat or other vessel, and compel the delivery of said freight; or in case of passing said port of destination in the night, and failing to give notice to said owners or consignees to receive said freight, and waiting a reasonable time for the delivery of the same, such attempt or failure shall be taken and deemed to be a debt against said boat, her captain and owners, and be placed upon the same footing with the debts specified in the first section of this article; and the value of said freight at the place of delivery, and reasonable damages to the owner or owners, may be recovered, as in the article above provided.

ARTICLE III.—*Of Liens of artisans, mechanics, tradesmen, and bailees, in certain cases.*

SEC.
1. Lien of artisan, &c. In case of failure *to pay, &c. How enforced—may* sell, &c.
2. Same in case of repairs.
3. Sale to be by auction.
4. Notices of sale.
5. Surplus paid into county treasury, if owner absent.

SEC.
6. Same shall be loaned, &c.
7. *Lien in case of bailee, keeper, &c.*— how satisfied.
8. As to cattle, hogs, &c.
9. Additional compensation in such cases —how paid.
10. Copies of notice, &c, verified by oath, to be filed. Effect in evidence.

SECTION 1. Whenever any person shall leave with, or put into the hands of any mechanic, artisan, or tradesman, any materials or articles to make or construct, in whole or in part; any article of furniture or jewelry, or implement, utensil, clothing, or other article of value, such mechanic or artisan, if the same be not taken away, and his fair and reasonable charges paid, shall have the power, after one year from the completion thereof, and such charges have been due and payable for that length of time, to sell and dispose of the same; or if the same be susceptible of division, without deterioration or injury, to sell and dispose of so much thereof as may be necessary to pay his charges for his labor and skill employed thereon, and for any materials which he may have furnished in the making and construction thereof.

SEC. 2. When any person shall leave or deposit with any mechanic, artisan, or tradesman, any watch, clock, article of furniture or jewelry, or any implement, utensil, or clothing, or other article of value, to be altered, fitted, or repaired, and shall fail or refuse, for one whole year from the time the work to be done thereon shall have been completed, to pay the fair and reasonable charges therefor; such mechanic, artisan, or tradesman, may sell and dispose of the same, or so much thereof as can be sold without injury, to defray such charges.

SEC. 3. Such mechanic, artisan, or tradesman, shall make such sale at public auction to the highest and best bidder therefor, for cash, or on such reasonable credit as may be deemed advisable; taking sufficient sureties, in case of a sale on time, as will secure the payment of the purchase money.

SEC. 4. Before making such sale, he shall give public notice of the time and place thereof, by publishing the same in some public newspaper printed in the county; or if there be no such paper, by advertisement, set up for ten days in three of the most public places in the city or township where such mechanic, artisan, or tradesman resides, one of which shall be in some conspicuous part of his shop or place of business.

SEC. 5. When such article or articles shall be sold as aforesaid, so much of the proceeds of such sale as remain after the payment of the charges of such alterations and repairs, and for the publication and notice as aforesaid, if the owner be absent, shall be deposited in the hands of the treasurer of the proper county, by the person or persons making such sale, taking the treasurer's receipt therefor.

SEC. 6. Said sum shall remain subject to be drawn for by the person legally entitled thereto; if, however, one year shall elapse before such person or persons shall make demand therefor, of such treasurer, such treasurer shall loan the same out at a rate of interest not less than six per cent. per annum, upon good security, the interest thereof to be applied to the use and benefit of the county library of the proper county.

SEC. 7. The provisions of this article, except as provided in the next section, shall apply to all cases of personal property on which the bailee or keeper thereof has by law a lien for any feed, keeping, or care by him bestowed on such property, except in cases where the person liable shall have died before the expiration of one year from the time such charges have accrued; in which case such sale shall not be made until the expiration of six months from the time of his decease.

SEC. 8. In the cases embraced in the last preceding section, if the property bailed or kept be horses, cattle, hogs, or other live stock, and in all cases embraced in the provisions of this article, where the property is of a perishable nature, and will be greatly injured by delay, the person to whom such charge may be due, may, after the expiration of thirty days from the time when such charges shall have become due, proceed to sell and dispose of such property, or so much thereof as may be necessary, as hereinbefore provided.

SEC. 9. If any additional compensation for the keeping and taking care of such property has been necessarily incurred, the same shall be taken from the proceeds of the sale thereof, as a part of the charges to which such bailees are entitled.

SEC. 10. Attested copies of the notices required by this article, and of the publication thereof, and an affidavit of the mechanic, artisan, tradesman, or bailee, or some competent witness in his behalf, setting forth his claim, shall be filed and kept in the clerk's office of the county where such sale was made; and the same or copies thereof, attested and sealed by such clerk, shall be received as testimony in the courts of this Territory, and shall be presumptive evidence of the matters therein contained.

Passed the House of Representatives, January 31st, 1851.
Passed the Council, February 4th, 1851.

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(200)

LIMITATION OF ACTIONS.

An Act, *concerning the limitation of actions relating to Real Property.*

Sec.
1. No action or entry after twenty years, except, &c.
2. Computation of time if right accrued to ancestor, &c.
3. When right deemed to have accrued
4. Limitations after disseizin of sole corporation.

Sec.
5. Cases of disability.
6. Death of persons under disability.
7. No allowance for any second disability.
8. Entry on land; when effectual.
9. Action after abatement, reversal, &c.
10. Suits by the people of this Territory.

Section 1. No person shall commence an action for the recovery of any lands, nor make an entry thereupon, unless within twenty years after the right to make such entry or bring such action first accrued, or within twenty years after he, or those from, by, or under whom he claims, shall have been seized or possessed of the premises, or shall have received the rents and profits of the same, or some part thereof, except as hereinafter provided.

Sec. 2. If such right or title accrued to an ancestor, or predecessor of the person who brings the action, or makes the entry, or to any other person, from, by, or under whom he claims; the said twenty years shall be computed from the time when the right or title so first accrued to such ancestor, predecessor, or other person.

Sec. 3. In the construction of this act, the right to make an entry or bring an action to recover land, shall be deemed to have first accrued at the times respectively hereinafter mentioned, that is to say:

1. Whenever any person shall be disseized, his right of entry or of action shall be deemed to have accrued at the time of such disseizin.

2. When he claims as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by courtesy, or other estate intervening after the death of such ancestor or devisor, in which case his right shall be deemed to accrue, when such intermediate estate shall expire, or when it would have expired by its own limitation.

3. When there is such an intermediate estate, and in all other cases where the party claims by force of any remainder or reversion; his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate, would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time.

4. The preceding clause shall not prevent any person from

entering when entitled to do so by any forfeiture or breach of condition; but if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred or the condition broken.

5. In all cases not otherwise provided for, the rights shall be deemed to have accrued when the claimant, or the person under whom he claims, first became entitled to the possession of the premises, under the title upon which the entry or action is founded.

SEC. 4. If any sole corporation shall be disseized, any of his successors may enter upon the premises, or may bring an action for the recovery thereof, at any time within five years after the death, resignation, or removal of the person so disseized, notwithstanding the twenty years after such disseizin shall have expired.

SEC. 5. If, at any time when any right of entry or of action, upon or for any lands, shall first accrue as aforesaid, the person entitled to such entry or action, shall be within the age of twenty-one years, or a married woman, insane, imprisoned, or absent from the Territory; such person, or any one claiming from, by, or under him, may make the entry or bring the action, at any time within five years after such disability shall be removed, notwithstanding the twenty years before limited in that behalf, shall have expired.

SEC. 6. If the person first entitled to make such entry or bring such action shall die during the continuance of any of the disabilities mentioned in the preceding section, and no determination or judgment shall have been had of or upon the title, right, or action which accrued to him; the entry may be made, or the action brought by his heirs, or any other person claiming from, by, or under him, at any time within five years after his death, notwithstanding the said twenty years shall have expired.

SEC. 7. If, at any time when such right of entry, or of action shall first accrue, the person entitled thereto shall be under any of the disabilities before mentioned, and shall die before having recovered the premises, no further time for making such entry or bringing such action, beyond that hereinbefore prescribed, shall be allowed by reason of the disability of any other person.

SEC. 8. No person shall be deemed to have been in possession of any lands, within the meaning of this act, merely by reason of having made an entry thereon, unless he shall have continued in peaceable possession of the premises for at least six months next after such entry, or unless an action shall be commenced upon such entry or seizin, within two years after he shall be ousted or dispossessed of the premises.

SEC. 9. If any action of which the commencement is limited by this act, shall be abated by the death of any party thereto, or if after verdict for the demandant or plaintiff, the judgment shall be arrested; or, if judgment in any such action be given for the demandant or plaintiff, and the judgment shall be reversed for error therein, the demandant or plaintiff, or any person claiming, by, from, or under him, may bring an action for the same cause, at any time within one year after the determination of the original action, or after the reversal of the judgment.

SEC. 10. No suit for the recovery of any lands shall be commenced by, or in behalf of the people of this Territory, unless within twenty years after the right or title of the people of the Territory therein first accrued; or within twenty years after the said people, or those from, or through whom they claim, shall have been seized or possessed of the premises, or shall have received the rents and profits of the same, or some part thereof.

Passed the House of Representatives, January 13th, 1851.
Passed the Council, January 17th, 1851.

LITERARY AND RELIGIOUS SOCIETIES.

AN ACT, *to regulate incorporated Literary and Religious Societies.*

(201)

SEC.
1. Literary or religious societies hereafter incorporated How regulated, and their general powers.
2. Limitations of capital stock, not to be employed in banking, &c.

SEC.
3. Directors or trustees individually liable for debts.
4. The right to alter or amend, &c. Acts of incorporation, under this act, reversed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all associations for literary or religious purposes, except common schools, colleges and universities which the Legislative Assembly may hereafter incorporate, shall be regulated as follows, viz.: The person or persons named in each act of incorporation, their associates and successors, by their corporate name, may sue and be sued, plead and be impleaded, in all courts of law and equity; have a common seal, and alter the same at their pleasure; hold all kinds of estate, which they may acquire by purchase or donation, and the same to sell and convey at discretion; form a constitution, and enact by-laws for their good government; make all necessary regulations for managing their fiscal concerns, admitting, excluding, or expelling members, and appointing officers, and may do such other acts as may be necessary to effect their respective objects in scientific improvement: *Provided, however*, That said constitution, by-laws, and regulations, shall be consistent with the Constitution of the United States, and with the act of Congress organizing this Territory.

SEC. 2. The capital stock of bodies incorporated under the provisions of this act, shall in no case exceed fifty thousand dollars each, unless extended in their respective acts of incorporation; and no part of said funds, or the income thereof, shall at any time be employed in banking, nor shall such institution issue certificates of deposits or drafts on the treasury of said corporations, which can in any manner be used as a circulating medium.

Sec. 3. The directors or trustees of each and every company incorporated under the provisions of this act, shall be deemed and held individually liable for all the debts of their respective associations.

Sec. 4. The right to alter, amend, or repeal any act of incorporation granted under the provisions of this act, when the public good requires such alteration, amendment, or repeal, is expressly reserved to any future Legislature. This act to take effect, and be in force, from and after its passage.

Passed the House of Representatives, January 28th, 1851.
Passed the Council, February 1st, 1851.

OREGON STATE LIBRARY

MANDAMUS AND PROHIBITION.

An Act, *concerning Writs of Mandamus and Prohibition.*

Sec.
1. When writ of mandamus may issue.
2. Jurisdiction of Supreme Court in case of mandamus
3. When writ to issue out of Supreme Court
4. When out of District Court.
5. How such writ shall issue. When returnable.
6. Return.
7. Pleadings.
8. Damages.
9. Recovery to be a bar, &c
10. Power of court to enlarge time for a return to plead, &c
11. Fine in case of refusing to obey a peremptory mandamus Such fine a bar to a criminal prosecution.
12 Prohibition—when to issue out of the Supreme or District Court.
13 To issue on affidavit. Return of writ.
14 Command of the writ.
15. How served. Return—how enforced. Party named in the writ may adopt return of the court to which the writ is directed. Adverse party may plead, &c, thereto. Issues.
16. Proceedings, if return not thus adopted.
17. Judgment.
18. Prohibition, absolute, &c.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That a writ of mandamus may issue out of the Supreme Court, or any of the District Courts of this Territory, subject to the provisions hereinafter prescribed.

Sec. 2. Such writ shall not issue out of the Supreme Court, unless to a Court of Record of inferior jurisdiction, or to some tribunal or ministerial officer, in cases where the granting of such writ is necessary and proper to the due exercise of the jurisdiction and powers of such Supreme Court.

Sec. 3. In all other cases where proceedings by such writ are proper and necessary, such writ shall issue out of the District Court having jurisdiction.

Sec. 4. Writs of mandamus shall issue upon affidavit by motion; and shall be tested in the name of the clerk, and sealed with the seal of the court, and shall be returnable at such reasonable time as the court shall direct.

Sec. 5. When any writ of mandamus shall be issued out of any District Court in this Territory, the person, body, or tribunal to whom the same shall be directed and delivered, shall make return to the first writ of mandamus; and for neglect so to do, shall be proceeded against as for a contempt.

Sec. 6. Whenever a return shall be made of any such writ, the person prosecuting such writ may demur or plead to all or any of the material facts contained in the said return; to which the person making such return shall reply, take issue, or demur; and the like proceedings, trial and judgment shall be had therein for the determination thereof, as might have been had if the person prosecuting said writ had brought his action on the case for a false return.

Sec. 7. In case a verdict shall be found for the person suing out such writ, or if judgment be given for him on demurrer, or by default, or for want of a replication or any other pleading, he shall recover damages and costs in like manner as he might have done in such action on the case as aforesaid; and a peremptory mandamus shall be granted to him without delay.

Sec. 8. A recovery of damages, by virtue of this article, against any party who shall have made a return to a writ of mandamus, shall be a bar to any other action against the same party for the making of such return.

Sec. 9. The court shall have the same power to enlarge the time of making a return, and pleading to such writ, and filing any subsequent pleadings, and to continue such cause, as in personal actions.

Sec. 10. Whenever a peremptory mandamus shall be directed to any public officer, body or Board, commanding him or them to perform any public duty, specially enjoined upon them by any provision of law; if it shall appear to the court that such officer, or any member of such body or Board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars upon every such officer or member of such body or Board; and such fine, when collected, shall be paid over for the use of the proper county; and the payment of such fine shall be a bar to any criminal prosecution for any penalty incurred by such officer, or member of such body or Board, by reason of his refusal or neglect to perform the duty so enjoined.

Sec. 11. Writs of prohibition may issue from the Supreme Court, or any District Court of this Territory; but such writ shall issue from the Supreme Court, only when the same is essential to such court in the exercise of its jurisdiction and powers; and no other court can take cognizance of the subject matter thereof.

Sec. 12. Such writs shall be applied for upon affidavits, by motion, and shall be issuable and returnable in like manner as writs of mandamus.

SEC. 13. The writ shall command the court and party to whom it shall be directed, to desist and refrain from any further proceedings in the suits or matter therein specified, until the return of the writ, and the further order of the court granting the writ thereon; and upon such return, to show cause why they shall not be absolutely restrained from any further proceedings in such suit or matters.

SEC. 14. Such writ shall be served upon the court or tribunal and party to whom it shall be directed, in the same manner as a writ of mandamus, and a return shall, in like manner, be made thereto by such court, which may be enforced by attachment.

SEC. 15. If the party to whom such writ of prohibition shall have been directed, shall, by instrument in writing signed by him, and annexed to such return, adopt the return made by such court or tribunal, and rely upon the matters therein contained, as sufficient cause why such court should not be restrained, as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter; and the person prosecuting such writ, may reply, take issue, or demur to the matters so relied upon by such defendant; and the like proceedings shall be had for the trial of issues of law or fact, joined between the parties, and for the rendering of judgment thereon, as in personal actions.

SEC. 16. If the party to whom such writ of prohibition shall have been directed, shall not adopt such return as above provided, the party prosecuting such writ shall bring on the argument of such return, as upon a rule to show cause; and he may, by his own affidavit and other proofs, controvert the matters set forth in such return.

SEC. 17. The courts, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, *restraining* the said court and party from proceeding in such suit or matter, do issue; or a writ of consultation, authorizing the court and party to proceed in the suit or matter in question.

SEC. 18. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto, as above provided, and judgment shall be rendered for the party prosecuting such writ, a prohibition absolute shall be issued; if judgment be given against such party, a writ of consultation shall be awarded as above provided.

Passed the House of Representatives, December 20th, 1850.
Passed the Council, January 2d, 1851.

MILLERS.

AN ACT, *fixing the rate of toll for grinding.*

SEC.
1. One-eighth of wheat, rye, or other grain, ground and bolted. One-tenth, if ground or chopped only. One seventh of Indian corn.
2. Liability and duty of millers.

SEC.
3. Frauds punished by fine, for use of schools.
4. Millers exempt from building bridges, but required to give notice to supervisor before digging race, or supervisor empowered to fill up the race.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the owner or occupier of any grist mills within this Territory, shall be entitled to one-eighth part of all wheat, rye, or other grain ground and bolted; and one-tenth part of all rye, malt, buckwheat, or other grains ground or chopped only; and the one-seventh part of all Indian corn ground in said mill.

SEC. 2. That the owner or occupier of every mill aforesaid, shall be accountable for the safe keeping of all grains received in said mill, for the purpose of being ground therein, and shall deliver the same when ground and bolted (as the case may be), with the bag or bags, cask or casks, which were delivered in said mill, with the grain, to the owner when called for: *Provided*, That the bag or bags, cask or casks, left as aforesaid, be distinctly marked with the name, mark, or brand of the owner or owners thereof: *Provided also*, That nothing in this act shall be so construed as to charge or make accountable any owner or occupier of any mill for the loss of any grain, bag or bags, cask or casks, which shall happen by robbery, fire, or other accident, without the fault or neglect of such owner or occupier, or that of any other miller employed by such owner or occupier.

SEC. 3. That if the owner or occupier of any mill, their representative, agent, or miller, shall take a greater proportionate quantity of toll than is hereinbefore authorized, and be duly convicted thereof before any court having jurisdiction of the same, shall be fined for every such offence in any sum not exceeding fifty dollars, at the discretion of the court, for the use of the Common School Fund of the county; and shall, moreover, be liable at the suit of the person injured for damages.

SEC. 4. That if any person or persons having right to a water privilege, shall not be required to construct or keep in repair a bridge or bridges, across any race conveying water to or from his or their mill on any road or roads: *Provided*, That the person or persons executing or constructing such race or water course shall, in all cases, give at least thirty days' notice to the supervisor or overseer of roads having jurisdiction of the same; and on neglect to give such notice, said supervisor or overseer of roads shall have power to fill up, or demolish such excavation or construction, at the cost of the person or persons making them.

Passed the Council, January 1st, 1851.
Passed the House of Representatives, January 9th, 1851.

NEGROES AND MULATTOES.

An Act, *to prevent Negroes and Mulattoes from coming to, or residing in Oregon.*

Sec.
1. Negroes and mulattoes prohibited from coming into the Territory—proviso.
2. Masters of vessels may bring in negroes in their employ, to be responsible for their acts while in port.
3 Negro not to leave port without a written permission, except, &c.
4 Negro not to remain in port more than forty days.
5 Master neglecting so to do, punished by indictment, fine and imprisonment.
6. Judge or Justice of the Peace empowered to remove negroes remaining in this Territory contrary to the provisions of this act.
7. Punishment for second offence.
8. Act to be published by the Governor.

Whereas, situated as the people of Oregon are, in the midst of an Indian population, it would be highly dangerous to allow free negroes and mulattoes to reside in the Territory, or to intermix with the Indians, instilling into their minds feelings of hostility against the white race: Therefore,

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That it shall not be lawful for any negro or mulatto to come into, or reside within the limits of this Territory: *Provided*, That there is nothing in this act that shall be so construed as to apply to any negro or mulatto now resident in this Territory, nor shall it apply to the offspring of such as are residents, as aforesaid.

Sec. 2. That masters and owners of vessels having negroes or mulattoes in their employ, on board of vessels, may bring them into Oregon: *Provided*, That in so doing, such master or owner shall be responsible for the conduct of such negro or mulatto, during their detention in said Territory, and shall be liable to any person aggrieved by such negro or mulatto.

Sec. 3. No negro or mulatto shall be permitted to leave the port where vessels upon which they are or may be employed shall be lying, without the written permission of such master or owner, unless under their immediate control and superintendence.

Sec. 4. That it shall be the duty of masters and owners of vessels having brought negroes or mulattoes into Oregon, as aforesaid, to cause such negro or mulatto to leave the Territory with such vessel, upon which they shall have been brought into the Territory, or upon some other vessel, within forty days.

SEC. 5. If any master or owner of a vessel having brought negroes or mulattoes, as provided for in the second section of this act, into this Territory, shall fail to procure and take the same with them when leaving the Territory, or cause such negro or mulatto to leave as required in the fourth section of this act, such master or owner shall be deemed guilty of a misdemeanor, and punished by indictment in any court having jurisdiction of the same; and on conviction of the same, shall be fined and imprisoned at the discretion of the court: *Provided*, That the fine in no case shall be less than five hundred dollars.

SEC. 6. If any negro or mulatto shall be found in this Territory, except as hereinbefore provided, and except such as may now be permanent residents, it shall be the duty of any Judge or Justice of the Peace, to whose knowledge the same shall come, either by the affidavit of any other person, or from their own observation, to issue a warrant for the apprehension of such negro or mulatto, directed to any sheriff or constable, or any other suitable person, commanding such officer or other person forthwith to arrest, and bring before the officer issuing the warrant such negro or mulatto, who, upon being satisfied that such negro or mulatto is unlawfully remaining in the Territory, shall issue such order for the removal from the Territory of such negro or mulatto, as in the opinion of such Judge or Justice of the Peace, shall be best calculated to cause the removal of such person from the Territory.

SEC. 7. If any negro or mulatto shall be found a second time unlawfully remaining in this Territory, he shall be deemed guilty of a misdemeanor, and shall be punished by indictment in any court having jurisdiction thereof, and on conviction, shall be fined and imprisoned at the discretion of the court.

SEC. 8. The Governor of this Territory shall cause this act to be published in the California newspapers, and such other newspapers as he may think necessary, in order to carry out the spirit of the same.

Passed, September 26th, 1849.

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OATHS AND AFFIRMATIONS.

AN ACT, *concerning Oaths and Affirmations.*

SEC.
1. Who may administer oaths. Effect of false swearing.

SEC.
2. Forms prescribed.
3. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all courts now established, or hereafter to be established within and for this Territory, and each Judge, Justice, and clerk thereof, and all Justices of the Peace, and any other person or persons authorized by law, shall respectively have power to administer oaths and affirmations to witnesses and others concerning any thing pending, or proceeding commenced, or to be commenced before them respectively; and the said courts, the Judges, Justices, and clerks thereof, within their respective districts, circuits, or counties, and the Justices of the Peace within their counties, shall severally have power to administer all oaths of office, and other oaths required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place, or business, or any other lawful occasion; and to take affidavits and depositions concerning any matter or thing, process, or proceedings pending, or to be commenced in any court, or before any Justice of the Peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken; and all oaths, affirmations, and depositions so administered, or taken, shall subject any person who shall so swear or affirm, wilfully, and falsely, in any matter material to any issue or point in question, to all the pains and penalties inflicted by law, for the time being, on persons convicted of wilful and corrupt perjury.

Sec. 2. That the form of administering oaths to such persons as swear with the hand upon the Bible, shall be: "You do swear upon the Holy Evangelists of Almighty God;" and the form of administering an oath to persons who swear with the hand uplifted, shall be: "You do solemnly swear;" and every person shall be at liberty to select whichever mode he or she may choose: *Provided*, That any person who may have conscientious scruples against taking an oath in either of the foregoing forms, shall be admitted, instead of taking an oath, to make his or her solemn affirmation, or declaration, in the following form, to wit: "You do solemnly, sincerely, and truly, declare and affirm;" which solemn affirmation or declaration shall be equally valid, as if such persons had taken an oath in the usual form; and every person guilty of falsely and corruptly declaring as aforesaid, shall incur and suffer the like pains and penalties as are, or shall be inflicted on persons convicted of wilful and corrupt perjury.

Sec. 3. This act to take effect and be in force, from and after its passage.

Passed the Council, September 3d, 1849.

PILOTS.

An Act, *for the establishing of a Pilotage on the Columbia and Wallamet Rivers.*

Sec.
1. Board of commissioners—who constitute—to examine and appoint pilots. Pilot may appoint deputies, subject, &c. Vacancies in Board, how filled
2. Bond of pilot or deputy—condition of, &c.
3. When pilot to take charge of vessel bound into Columbia River.
4. Pilot to keep pilot boats, &c.
5. Commissioners to establish fees of pilots, &c.
6. Penalty for negligence or unskilfulness.

Sec.
7. When master may pilot his own vessel, &c.
8. Commissioners authorized to remove pilots upon complaint.
9. When consignees liable for pilotage.
10. Where fines, penalties, &c., recovered.
11. When pilot carried out to sea. Compensation.
12. Commissioners' compensation—how allowed, and by whom paid.
13. Acts repealed.
14. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the Governor of this Territory, John W. Couch, and Nathaniel Crosby, shall constitute a Board of commissioners for the purpose of examining candidates for the pilotage of the Columbia River, and appoint one or more suitable persons to be pilots on the bar of the Columbia; and also one or more pilots on the Columbia River to the head of navigation on that and the Wallamet Rivers, giving each of said pilots a branch or warrant for the execution of his office, with an authority to appoint deputies in the cases to be specified in such branch or warrant: *Provided*, Each pilot shall report his said deputies for the approbation of the said Board of commissioners: *Provided also*, That whenever there shall occur a vacancy in such Board of commissioners, such vacancy shall be filled by an appointment made by a majority of their own body.

Sec. 2. Every such pilot and deputy shall, before entering upon the duties of his or their office, give bond with sufficient security to the said Board of commissioners, in the sum of five thousand dollars, for the faithful performance of his or their duties in office.

Sec. 3. Every such branch pilot is authorized and directed, by himself or his deputy, to take charge of any vessel bound into the Columbia River, except vessels of less than twenty-five tons burthen, engaged in the coasting trade of the Territory of Oregon; said pilot first showing his branch or warrant to the master of any such vessel, if required; the authority to take charge having effect upon the presentation of such branch or warrant.

Sec. 4. The pilot or pilots shall always keep such boat or boats to cruise outside the bar, as may be approved as suitable by the power granting such branch or warrant.

Sec. 5. The said Board of commissioners are authorized to determine the fees of pilotage, of the pilot or pilots by them appointed, and to specify the same in their respective warrants; and to direct and authorize all arrangements and operations that may be necessary to facilitate the navigation of the Columbia River.

SEC. 6. If any vessel while under the charge of a branch or warrant pilot, or his deputy, shall be lost or run aground, or sustain any damage through the negligence or unskilfulness of such pilot or deputy, such pilot shall be liable both for himself and his deputy to pay all damages sustained by any person interested in such vessel or her cargo; and may, moreover, be removed from his office.

SEC. 7. Any master of a vessel who may choose to pilot his own vessel from outside the Columbia River bar to Baker's Bay, across said bar, shall be permitted so to do; but he shall, notwithstanding, when bound into the river, pay to such pilot as shall first offer his services outside of Cape Disappointment, or outside of Point Adams, full pilotage, according to the fees specified in his warrant.

SEC. 8. The said Board of commissioners are authorized to hear and determine all complaints exhibited against the pilots appointed by them as aforesaid, and their deputies, and to suspend or remove them, and appoint others in their place.

SEC. 9. Should any ship-master omit or refuse to pay the pilotage fees in any instance, when by this law he has become liable, then his consignees shall become liable for the same.

SEC. 10. That all penalties, forfeitures, and complaints incurred under this act, shall be tried and determined in any Court of Record having cognizance of the same.

SEC. 11. That if a pilot acting under the provisions of this act, shall have boarded any vessel outward bound, and shall be detained on board said vessel and carried out to sea, or to any foreign port, the officers of such vessel so detaining said pilot, shall be liable to pay to the pilot so detained, a compensation equal to the pay of the highest officer on board of said vessel for all the time he shall be so detained from his proper post.

SEC. 12. The said Board of commissioners hereby created, shall be entitled to receive a reasonable and just compensation for their services for the time necessarily spent in the performance of the duties assigned them by this act, not exceeding five dollars each per day; to be paid out of the treasury of the Territory, upon a warrant of the auditor, who is hereby required to audit and allow the same.

SEC. 13. All acts or parts of acts in any manner conflicting with the provisions of this, are hereby repealed.

SEC. 14. This act to take effect and be in force, from and after its passage.

Passed, September 19th, 1849.

AN ACT, *supplementary to an act entitled "An Act establishing a Pilotage on the Columbia and Wallamet Rivers."*

SEC.
1. Branch pilot may, by himself or deputy, take charge of vessel, &c. Fees for the same.

SEC.
2. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That every branch-pilot appointed under the provisions of the act to which this is a supplement, is authorized, by himself or his deputy, to take charge of any vessel bound out of the Columbia River, except vessels of less than twenty-five tons burthen, as is provided for in said act, said pilot first showing his branch or warrant to the master of such vessel; and shall be entitled to charge and receive the same fees as are allowed by law for piloting vessels bound into the Columbia River.

SEC. 2. This act to take effect, and be in force, from and after its passage.

POOR.

AN ACT, *to provide for the relief of the Poor.*

SEC.
1. County to support its own poor.
2. Probate Court to grant relief at discretion.

SEC.
3. Probate Court to grant relief—upon what information.
4. Funeral expenses of paupers.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That each county in this Territory shall relieve, support, and maintain its own poor; such as the lame, blind, sick, and other persons who, from age or infirmity, are unable to support himself or herself, and who have resided three months next preceding the time of any order being made respecting such persons, in the county, and who have not removed from another county, for the purpose of imposing the charge of keeping such poor person in the county where he or she may have last lived, for the time aforesaid.

SEC. 2. The Probate Court shall at all times use their discretion, and grant relief to all citizens who may require their intercession.

SEC. 3. The Probate Court, in their respective counties, on the information of any Justice of the Peace of the county where any poor person may have resided, for the space of time in the first section of this act mentioned; or on the knowledge of the Judges of said tribunal, or any of them, that such person is lame, blind, or sick, and thereby unable to support himself, or herself, or from age or infirmity unable to support himself or herself, shall, from time to time, and as often, and for as long a time as it may be necessary, provide, at the expense of the county, for the support and maintenance of such poor person.

SEC. 4. Any Probate Court may, in its discretion, allow such sum as it shall think reasonable for the funeral expenses of any pauper who shall die within the county.

Passed, September 27th, 1849.

PRACTICE—CHANCERY.

AN ACT, *directing the mode of proceeding in Chancery.*

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SEC.

1. Equity jurisdiction of District Court.
2. Concurrent and appellate, of Supreme Court.
3. May establish rules. To be governed by usages in chancery.
4. Applications to be by petition filed.
5. Subpœna to issue on bill. When returnable.
6. Form of subpœna, &c.
7. When all, or some of defendants reside in different counties, or out of the Territory, how their appearance may be effected.
8. How subpœna, &c., for appearance served, and service endorsed and verified. When defendant considered in court.
9. Parties defendants under different titles. Costs on disclaimer.
10. When the names of defendant's heirs are unknown, how to proceed.
11. How answer to a bill of discovery may be used.
12. Persons having title and possession of land, may compel other claimants to release or disclaim. Costs in such case.
13. In what cases, and how a creditor, before a judgment or decree, may proceed in chancery against persons holding the effects, or owing his debtor.
14. In what cases, and how he may proceed in chancery for like purpose, after judgment or decree, and also against equities, stocks, &c.
15. Pleas and answers When and where to be filed. When petition taken as confessed, and proofs and decree in such case.
16. Issue may be taken on plea.
17. Demurrer first disposed of.

SEC.

18. Pleas, &c., overruled—decree *pro confesso*, or answer received on affidavit of merits, &c.
19. Costs upon plea, &c., by whom paid.
20. Replication or exceptions, when to be filed. Effect of not filing.
21. Costs upon exceptions, by whom paid.
22. If answer insufficient, when second to be filed. Effect of not filing second answer.
23. Remedy of complainant, if second answer insufficient.
24. Before whom defendant may swear to answer.
25. How defendant may make new parties to the cause.
26. When defendant may put interrogatories to complainant. Answers thereto—evidence. How answers enforced.
27. When cross bill to be answered.
28. Rules by consent, when entered.
29. Costs of amendment.
30. Parties to take notice of filing pleadings, and of decrees.
31. On hearing on bill and answers only. Answer to be taken as true, unless, &c.
32 Cause is at issue on replication.
33 Issues out of chancery. Record and effect of verdict.
34. Decrees to operate as judgments at law.
35. Decree for a conveyance to operate as a conveyance.
36. Writs of *ne exeat*, by whom, and when, and how allowed.
37. When such writ may be discharged.
38. Injunction to stay waste or proceedings at law—by whom granted.
39. Injunction to stay proceedings at law—amount in dispute to authorize al-

Sec.

lowance—the petition and security by complainant.

40. Such injunction not to operate until bond given. Condition of such bond, and approval of security. Writ of injunction not to issue, but its allowance endorsed on subpœna.

41. Decree, with penalty, &c., in common pleas. When such injunction dissolved, and bill dismissed.

42. On appeal to Supreme Court in such case, decree for penalties, &c. If bill dismissed, &c.

43. Money received by officer, on execution, to be repaid by him, if proceedings enjoined.

44. If he refuses, may be amerced. But such money may abide the order of the court or Judge.

45. Proceedings against party disobeying injunction to stay waste.

46. Same subject.

47. Injunctions may be allowed in all other cases usual in chancery, and on what showing and terms.

48. How decrees and orders may be enforced.

49. Officer failing to make return of process in chancery, to be in contempt, and fined.

50. How process, rules and orders enforced by fine and imprisonment.

51. Costs—against whom awarded, and how collected generally, in chancery.

52. Appeal to Supreme Court from final decrees of District Court—when and how taken.

53. Petitions for removing—when, by whom, and how granted.

54, 55, 56. Petition for review—when, by whom, and how granted, and proceedings thereon, and for stay of former proceedings, &c.

57. Decrees, against parties notified by publication—when, and how, and upon what terms opened, and effect upon purchaser upon former decree.

58. Either party to suit dying, how suit revived, &c.

59. Master commissioners may be appointed—term of office—their powers and duties—their fees.

60, 61, 62, 63. Bills to perpetuate evidence—their requisites, &c., and proceedings thereon, and effect, &c.

64. Costs in such cases.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the District Courts of this Territory shall have jurisdiction in all cases properly cognizable by a court of chancery, in which plain, adequate and complete remedy cannot be had at law.

Sec. 2. That the Supreme Court shall have concurrent jurisdiction with the District Courts, in all cases properly cognizable by a court of chancery, where the title to, or any contract in relation to land in question, or the sum or matter in dispute exceeds one thousand dollars in value; and appellate jurisdiction in all cases regularly brought before them from the chancery decisions of the District Court.

Sec. 3. The said courts shall have power to make rules and regulations for the government of proceedings had before them, and shall, in all things, be governed by the known usages of courts of equity, except where it may be otherwise provided by law.

Sec. 4. All applications to the chancery side of either of said courts, shall be by petition, setting forth the nature and grounds of the complainant's claim, which shall be filed in the office of the clerk of such court.

Sec. 5. The clerk, on the application of the complainant, or his solicitor, shall, after said petition is filed, issue a subpœna to the defendant or defendants named in said petition, commanding him or them to appear at the next term of the court, and answer the complainant's petition.

SEC. 6. The following shall be the form of a writ of subpœna:

The Territory of Oregon, ——— *County, ss.*

To the Sheriff or Coroner (as the case may be) of the County of ———. Greeting: We command you, that you summon A. B. to appear before the Judges of our Supreme Court, or the Judges of our District Court (as the case may be), at the Court House, on the —— day of ———, instant (or, next ensuing), to answer a petition in chancery, exhibited against him by C. D.; and this he shall in nowise omit, under penalty of one thousand dollars, and have then there this writ.

Witness, (the honorable E. F., Judge or president Judge,) of said court, at the Court House, this ——— day of ———.

C. H., Clerk of ———.

Which subpœna shall be signed by the clerk, sealed with the seal of the court, and be tested on the same day on which it is issued.

SEC. 7. When the complainant shall make several defendants to his petition, who reside in different counties in this Territory, the clerk of the court in which the same is filed, may issue subpœnas into the several counties in which said defendants are supposed to reside, directed to any proper officer therein, who shall serve and return the same; and in case where any or all of the defendants reside out of this Territory, the complainant may cause personal service of subpœna, with a copy of the petition; or he may cause notice of the pending of the petition, containing a summary statement of the object and prayer thereof, to be published six consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any, and if not, in some newspaper printed in this Territory, of general circulation in the county.

SEC. 8. The service of a subpœna, or other process for appearance, shall be by delivering a copy thereof to the defendant, or leaving one at his dwelling-house, or usual place of abode; the officer, or other person serving the same, shall endorse on the original the time and manner of service. And when the service is made out of this Territory, the return shall be verified by oath or affirmation; and upon return of service of the process, or due proof of notice having been given as aforesaid, the defendants shall be considered in court.

SEC. 9. The complainant may insert as many defendants in his petition as he may think proper, though they claim under different titles; but if any of the defendants disclaim, he shall pay their costs, except when the court, for special reasons, shall otherwise decree.

SEC. 10. In cases where it shall be necessary to make the heirs of any decedent defendants, and the names of all, or any part of them are unknown, and the complainant annexes to his petition, an affidavit of his want of knowledge of the names or residence of such heirs, proceedings may be had against them without naming them, and the court shall make such order in relation to notice, as they may deem proper.

SEC. 11. When either party shall have been called on for a discovery under oath, and the facts as to which the discovery is prayed are afterwards submitted to a jury, the answer put in as to such facts, shall be laid before the jury, in the same manner as the issues directed to be tried at law by a court of chancery.

SEC. 12. Any person having the legal title and possession of lands, may file a petition against any other persons setting up a claim thereto; and if the complainant establishes his title to said lands, the defendant shall be decreed to release his claim, and to pay the complainant his costs, unless the defendant in his answer shall disclaim all title or claim to such lands, and offer to give such release to the complainant; in which case the complainant shall pay the defendant's costs, except for special reasons the court shall otherwise decree.

SEC. 13. When a suit at law for the recovery of money, or damages for any cause of action, which would survive to or against the personal representatives of the plaintiff or defendant; or whenever a suit in chancery, for the recovery of a specific sum of money, or damages, shall be pending in either of the courts aforesaid, against a non-resident defendant, or against a resident defendant, who has, during the pendency of said suits, either secretly departed out of the jurisdiction of the court, or secreted himself or property within the same, so that the ordinary process of law cannot be served on either; and there should be any person or persons resident within such jurisdiction, who is or are indebted to, or has in possession goods and chattels, rights, credits, moneys, or effects of such non-resident, or secreting defendant, annexing an affidavit of the truth of the allegations therein contained, and of the amount of the debt or damages by him claimed; the court may in their discretion enjoin such other person or persons, from paying over, conveying away, or secreting such debts, by him owing to such non-resident or secreting defendant, or his goods and chattels, rights, credits, moneys or effects, until the final judgment at law, or decree in chancery can be had in such former cause. And the court, on final hearing, shall make such order or decree between the parties, as they shall think just and equitable.

SEC. 14. In all cases where judgments at law, or decrees in chancery have been obtained, and rendered against any person, and the debtor has not personal or real estate, subject to levy on execution, sufficient to satisfy said judgment or decree, but has any equitable interest in real estate as mortgagor, mortgagee, or otherwise, or any interest, shares, or stock in any banking, turnpike, bridge, or other joint-stock company; or any judgments or decrees, or any money, contracts, debts, or choses in action due to him, or which may become due; or moneys, goods, and effects in the hands or possession of any person, body politic or corporate, the same may be subjected in chancery to the payment of said judgment or decree. And applications may be made to the courts of chancery in the county where such judgment or decree was rendered, or where said lands lie, to subject any or all the hereinbefore enumerated interests, to the payment of the judgment or decree aforesaid, according to the usual course of proceeding, and known usages of courts of chancery; and the said courts shall decree sales, and enforce all necessary transfers and conveyances, to vest in any person purchasing or taking under such decree, all the right, title, and interest of the said debtor, in the interests sold, or the subject of the decree, at the time of the service of the process in such case, to be held in the same manner such debtor held the same: *Provided*, That the sale of all equitable interests in real estate, shall be conducted, in all respects, in the same manner as is provided by law, for the sale of real estate.

SEC. 15. The defendant shall file his plea, demurrer, or answer to the petition in the clerk's office of the court where the cause is pending, in sixty days next after the term to which process is returned served, or to which the defendant has been notified to appear, unless the court allow further time. And if the plea, demurrer, or answer shall not be filed, as aforesaid, the petition shall be taken as confessed by the defendant; and the court may thereupon decree, or in its discretion require the production of proof from the complainant, or examine him under oath touching the premises, causing the examination to be reduced to writing, and filed with the papers in the cause, and thereupon make such final or other decree as to them shall seem just and equitable.

SEC. 16. When a plea is filed, and the complainant conceives the same to be good, though not true, he may reply and take issue upon it, and proceed as in case of answer.

SEC. 17. If the defendant file a demurrer and answer, the complainant shall not proceed on the answer, till the demurrer has been argued or disposed of.

SEC. 18. If the plea or demurrer be overruled, no other plea or demurrer shall be received, but the complainant's petition shall be taken as confessed, and the court shall proceed to decree thereon; or in their discretion may receive an answer on affidavit of merits, and that such plea or demurrer was not filed for the purpose of delay.

SEC. 19. If the plea or demurrer be allowed, the complainant shall pay costs, and if overruled, the defendant shall pay them.

SEC. 20. The complainant shall file his exceptions or a replication, within thirty days after the time limited for filing an answer, if such answer be filed in time; or on failure thereof, such cause shall stand for hearing on petition and answer.

SEC. 21. If the exceptions of the complainant be overruled, he shall pay costs to the defendant, and if the defendant's answer be adjudged insufficient, he shall pay costs to the complainant.

SEC. 22. When the answer shall be adjudged insufficient, the defendant shall file a second or further answer, within thirty days after such adjudication, or within such further time as the court may direct; and on failure thereof, the said petition shall be taken as confessed, and such proceedings be had thereon, as if the first original answer had not been filed within the limited or granted time.

SEC. 23. If such second or further answer shall be judged insufficient, the defendant shall pay double cost; and in such case, further time to answer shall not be allowed, but the said petition shall be taken as confessed, and such proceedings be had thereon, as if the first original answer had not been filed in due time; or the defendant may be examined on interrogatories, and committed until he shall answer and pay costs.

SEC. 24. Every defendant may swear or affirm to his answer, before any Judge, Justice of the Peace, or master commissioner in chancery, or in any court of record in this Territory.

SEC. 25. When it is necessary for the defendant to bring a new party before the court, he shall state it in his answer, and insert interrogatories for him to answer; and thereupon a subpœna shall be sent out, and other proceedings be had as in case of other defendants.

SEC. 26. The defendant in chancery, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him on oath or affirmation, and such answer shall be evidence in the cause, in the same manner, and to the same effect, as the defendant's answer to the complainant's petition is evidence; and if the complainant shall not answer such interrogatories by the time appointed by the court, he shall be in contempt, and his petition dismissed with costs.

SEC. 27. If a cross petition be filed by any defendant, he must put in his answer to the first petition, before the defendant to the cross petition shall be compelled to answer.

SEC. 28. All rules, common or special, by consent of the parties or their counsel, shall be entered of course by the clerk, whether in term time, or in vacation.

SEC. 29. All amendments shall be made with or without costs, and on such equitable terms as the court shall direct.

SEC. 30. Parties to suits in chancery shall take notice, at their peril, of the filing of answers, demurrers, pleas, replications, and other pleadings, and of the pronouncing and signing decrees.

SEC. 31. If any complainant proceed to a hearing on the petition and answer only, the answer shall be taken as true in all points; and no evidence shall be given to contradict the same, unless it be matter of record to which the answer refers, and is provable by said record.

SEC. 32. Every chancery cause shall be considered at issue on filing a replication, and it shall not be considered necessary to enter a rule to rejoin in any cause.

SEC. 33. If there be an issue to any matter of fact which shall render the intervention of a jury necessary, the court are hereby authorized to direct the issue for the trial of the same; and verdict shall be entered of record, and made use of at the hearing of the cause.

SEC. 34. The decree of either of said courts, sitting in chancery, shall, from the time of their being pronounced, have the force, operation, and effect of a judgment at law.

SEC. 35. When a decree shall be made for a conveyance, release, or acquittance, in either of said courts, sitting as a court of chancery, and the party against whom the said decree shall pass, does not comply therewith by the time appointed, the said decree shall be considered and taken in all courts of law and equity, to have the same operation and effect, and be as available, as if the conveyance, release, or acquittance, had been executed conformably to such decree.

SEC. 36. The Supreme Court, or any Judge thereof, and the District Court, shall have power to grant writs of *ne exeat*, to prevent the departure of any defendant out of this Territory, until security is given to perform the decree; and writs of *ne exeat* shall be allowed at the discretion of the Supreme Court in term time, or any Judge thereof, in vacation; or of the District Court, in term time, or the Judge thereof in vacation, upon petition filed, with an affidavit annexed of the truth of the allegations; and if said writ be granted, the court or Judge shall direct to be endorsed thereon, in what amount security shall be given to the complainant.

SEC. 37. If the defendant shall by his answer satisfy the court that there is no reason for his restraint, or give sufficient security to perform the decree, the writ may be discharged.

SEC. 38. The Supreme Court or any Judge thereof, and the District Court or the Judge thereof, shall have power to grant writs of injunction to stay waste; and either of said courts, or any Judge thereof, shall have power to grant injunctions to stay proceedings, before or after judgment, of any of the courts of law.

SEC. 39. No injunction shall be allowed by the Supreme Court, or any Judge thereof, to stay proceedings at law, before or after judgment, unless the matter in dispute be of sufficient value to give original jurisdiction to the District Court; and no injunction shall be allowed by the District Court, or any Judge thereof, in such cases, unless the matter in dispute be of the value of twenty dollars; and in either case, the petition shall show good cause in equity for such injunction, and be verified by affidavit; and with the allowance, the court or Judge shall direct the amount in which security shall be given by the complainant.

SEC. 40. No injunction shall operate to stay proceedings at law, before or after judgment, until the party obtaining the same shall give bond, with sufficient security, to be approved by the clerk of the court granting such injunction, in the amount required by the court, or Judge allowing the same, for the payment of all moneys and costs due, or to become due from the complainant in such suit or judgment at law, and in all moneys and costs which may be decreed against him, in case such injunction shall be dissolved; and on the execution of the bond as aforesaid, the clerk shall endorse on the subpœna, "Injunction allowed and bail given," and shall sign his name thereto; and in no case shall it be necessary to issue the writ of injunction.

SEC. 41. In all cases where an injunction may be hereafter allowed, to stay proceedings at law, in an action for recovery of money only, upon the dissolution of the injunction, and dismissal of the petition in the District Court, the court shall render a decree in favor of the respondent (plaintiff at law) for the debt or damages, interest and costs, recovered at law; and also for the interest and cost accruing in chancery, together with five per centum penalty on the amount of debt or damages, and the interest which may have accrued.

SEC. 42. If the complainant shall appeal from the decree rendered in the District Court to the Supreme Court, in any case specified in the foregoing section, and the said injunction shall be dissolved, and petition dismissed, in said Supreme Court; they shall render a decree for the debt or damages, interest and costs, which were recovered at law; also for the interest and costs which may have accrued in the District Court and Supreme Court, together with ten per centum penalty on the debt or damages, and interest accrued in favor of the respondent.

SEC. 43. When a sheriff or other officer has received the whole, or any part of the money, for the collection of which any execution has issued, and the person against whom such execution has issued, his executors or administrators, shall obtain an injunction to stay the proceedings under such execution, the sheriff or other officers shall repay to the person against whom such execution issued, his executors, administrators, or attorney of record, the money so received, or such part thereof as may be enjoined, retaining sufficient to pay the costs to be collected by execution: *Provided*, The money has not been paid over to the plaintiff, his attorney of record, or his executors or administrators.

SEC. 44. If any sheriff or other officer shall fail or refuse, on demand made by the complainant, his executors, administrators, or attorney of record, to pay the money so received, or such part thereof as may be enjoined; he shall be amerced, on motion in open court, for the use of the plaintiff, in the same manner that such sheriff, or other officer, would be liable to be amerced for failing to pay over money made on execution; but nothing in this or the preceding section shall be so construed, as to prevent the court or Judge from ordering the money so made on execution as aforesaid, to be paid into court, or retained in the hands of the officer, until the said injunction shall be dissolved or made perpetual.

SEC. 45. If the person against whom an injunction to stay waste shall be allowed, after the service and notice thereof, shall do, commit, consent, direct, or suffer to be done, or committed, any waste or destruction of, or upon the premises, contrary to the injunction, the court, or any Judge of the Supreme Court, or any Judge of the District Court, in the recess of the courts; on motion on affidavit, may award an attachment for contempt to be issued against the person charged with disobedience to, and breach of the injunction.

SEC. 46. If the person so offending be brought before the court or Judge, by virtue of such attachment, and it shall appear to the court or Judge as aforesaid, that such waste or destruction hath been committed; the said court or Judge as aforesaid, may order said defendant, in their discretion, to pay to the clerk of the court a fine, not exceeding two hundred dollars, for the use of the county, and to make immediate restitution to the party injured; or in default thereof, to order such defendant to be committed to close custody, until he shall fully comply with such order, or be otherwise legally discharged.

SEC. 47. The Supreme Court, or any Judge thereof, and the District Court or Judge thereof, may allow injunctions in all cases (other than to stay waste, or proceedings at law, as herein are provided for), where it is usual for courts of equity to interfere by injunction, on petition filed, showing good cause in equity for such injunction, and verified by affidavit, and the court or Judge allowing the same, may impose such conditions upon the party obtaining it, as shall seem to them equitable.

SEC. 48. The courts of chancery shall have power to enforce their decrees and orders by attachment or sequestration; and if necessary, to award and issue final process against the goods, chattels, lands, and tenements, or against the person of any defendant, as may be issued on a judgment rendered in a court of law; and all such process shall be obeyed, executed, and returned by the sheriff or other officer, to whom the same shall be directed, in like manner, and under the same penalties, as are provided in cases of process issuing from a court of law.

SEC. 49. If any sheriff or other officer to whom any writ, process, or order of either of said courts of chancery shall be directed or delivered, shall not make return thereof, at the day of return, and according to the tenor of such writ, process, or order, the same not being stayed; he shall be in contempt, and process of contempt shall, on motion, in term time, be issued against him, and the court may order him to pay to the clerk of the court a fine not exceeding fifty dollars, together with costs.

SEC. 50. The courts of chancery shall have power to enforce obedience to their process, rules, and orders, by process of attachment for contempt; and any person in contempt may be fined in any sum not exceeding fifty dollars, at discretion, and imprisoned until the said process, rule, or order, shall be obeyed and performed, and until the fine imposed for the contempt and the costs be fully paid.

SEC. 51. The courts of chancery shall have power in all cases to award and tax costs, on equitable principles, at their discretion, except where it is otherwise directed by this, or any other legislative act; and the payment of such costs, when awarded and taxed, may be enforced by writs of *fieri facias*, *capias ad satisfaciendum*, or in any other mode said courts may direct.

SEC. 52. Any person, or the heirs, or personal representatives of such person, may appeal to the Supreme Court from any final sentence or decree, pronounced or made in any cause or suit in chancery, in the District Courts, on giving notice and security within the time required by law, in cases of appeals of suits at law; and no lien created by said sentence and decree on any real estate, shall be vacated or removed by said appeal, but shall remain until the final adjudication of the cause in the Supreme Court.

SEC. 53. Petitions for rehearing shall be signed by counsel, and preferred within thirty days after the making of the order on the hearing; and the prayer of such petitions shall be allowed or disallowed, at the discretion of either of the Judges of the court, who made the order on the hearing of the case.

SEC. 54. Any person who was a party to a decree of a court of chancery, his heirs, executors, or administrators, may file a petition for a review of the proceedings in which such former decree was rendered, at any time within five years next after rendering such decree, unless the person entitled to such petition for review was an infant, *feme covert*, *non compos mentis*, or imprisoned, then within five years after the removal of said disability.

SEC. 55. If the petition for review be brought upon errors of law, appearing in the body of the decree, or proceedings themselves, it may be filed as an original petition in chancery, as a matter of course; but if the petition for review be brought upon the discovery of new matter, since the hearing on the former decree, it shall only be filed with the leave of the court to which it is exhibited; in either case, the court may, at their discretion, on motion, stay the proceedings on the former decree, until the further order of the court, or final decree is made on the petition for review: *Provided*, The motion to stay proceedings be made at the term at which the petition for review is exhibited, and leave filed; or if filed in vacation, then at the next succeeding term; and if proceedings are decreed to be stayed, the court shall direct security to be given as in cases of appeals or injunctions to stay proceedings at law.

SEC. 56. If the proceedings are not stayed by order of the court, the party against whom such former decree was rendered shall fully comply therewith; and the court may, if they deem it necessary, require security for costs to be given, on the petition of review.

SEC. 57. Parties against whom a decree has been rendered, without other notice than the publication in the newspaper, as provided for in this act, may at any time within five years after the date of the decree, have the said decree opened, and be let in to defend and to a hearing; but before the decree shall be opened, the applicant shall give notice to the original complainant, or his representatives, of the intention to make the application; and shall file a full answer to the original bill, pay all costs, and make an affidavit that, during the pendency of said suit, he or she received no actual notice thereof, in time to appear in court and object to said decree: *Provided*, That the title to any real or personal estate, the subject of the former decree, which by it, or in consequence of it, shall have passed into the hands of a *bona fide* purchaser, shall not be affected by any proceedings under this section.

SEC. 58. When any suit in chancery is pending, and either party thereto shall die, the same may be revived for or against the executors or administrators, heirs, legatees, or devisees, of the deceased intestate or testator, in the same manner as any suit may be revived at law, by or against the executors, administrators, heirs, legatees, or devisees of any decedent.

SEC. 59. The Supreme Court and District Court may, whenever they deem it necessary, appoint in each county such number of persons as they may think necessary, to be master commissioners in chancery, who shall hold their offices for three years, unless sooner removed by the court for good cause; and the said commissioners shall have power to take depositions in cases at law and equity, to issue process to compel the attendance of witnesses, which shall be served as other process in chancery; and to do all such other acts of a ministerial nature commonly performed by masters in chancery, who shall be allowed such fees for taking depositions as are pointed out by law; and for all other services rendered, such fees as are allowed for similar services to other officers, or shall be assessed by the court, and taxed in the bill of costs.

SEC. 60. Petitions in chancery which shall be hereafter filed for the purpose of perpetuating evidence, shall set forth, specially, the subject matter relative to which such evidence is to be taken, the names of parties, if known to the complainant; but if not known, then such general description as he may be able to give of the person, as heir or devisee, alienee, or otherwise, as the representative of some person, who shall be named in such petitions; and the defendants shall be brought into court in the same manner as in other cases.

SEC. 61. The complainant, before he takes any evidence under any order which may be made in such case, shall file in court the names of the witnesses, and the interrogatories to be propounded to each witness. And where actual notice has not been served on the defendant, the court, or a Judge thereof in vacation, shall appoint some attorney of the court to examine the petition and interrogatories; and to file cross-interrogatories thereto, which shall be forwarded with the interrogatories, to the officer taking the depositions; and these shall be fully answered by such witnesses; and no questions, other than those filed in court, shall be put to such witness, nor any statement be received from him, which is not responsive to some one of the interrogatories; and the attorney filing the cross-interrogatories, by order of the court, shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

SEC. 62. Such deposition shall be taken before one of the master commissioners in this Territory, or before some person specially authorized by *dedimus potestatem*, to take the same, and when taken, shall be returned to the court, in which such petition is pending; and if the court shall be satisfied that the depositions have been properly taken, and conformably to the provisions of this act, they shall order them to be made a part of the record in the cause; and such original deposition, or a certified copy thereof, shall be evidence in any suit which may be thereafter litigated between the parties to such petition, or their privies, relative to the property which shall have been the subject matter thereof, provided the deponent cannot be obtained to testify in such subsequent suit or litigation.

SEC. 63. If at any time after filing such petition as aforesaid, the complainant shall prove by his own oath or otherwise, to the satisfaction of the court, or any Judge thereof, in vacation, that any material witness is old, infirm, or about to leave the Territory, whereby he will be in danger of losing the evidence of such witness, by death, inability to testify, or removal, the court, or such Judge in vacation, may make, and cause to be filed among the records in such cause, an order for taking the deposition of such aged, infirm, or going witness, *de bene esse;* and in case of the death or removal of such witness before the defendant can be brought into court as above directed, such deposition shall be holden good and valid, as if the same had been taken by order of the court, after service of notice, or notice duly published.

SEC. 64. All such petitions shall be filed, and proceedings thereon had at the proper costs of the complainant.

Passed, September 14th, 1849.

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(209)

PRACTICE—DISTRICT AND SUPREME COURTS.

AN ACT, *to regulate the practice in the District and Supreme Courts of this Territory.*

SEC.
1. Authority—test—date—and return of writs.
2. Service and return of writs. Proviso.
3. Continuance granted for certain reasons.
4. Proceedings on trial when one or more defendants are absent—judgment, &c.
5. Sheriff punished as for contempt for neglecting or refusing to return summons.

SEC.
6. Effects of failure to file declaration at certain time before first term, and also second term of court.
7. Clerk to keep docket, apportion and classify causes, &c.
8. Duty of clerk as to witnesses.
9. When court may decide law and facts.
10. Parties required to produce books, &c. Particulars to be filed in defendant's plea.

Sec.

11. Time of pleading—judgment by default—continuance. Admission of facts, &c.
12. Multiplicity of pleas—general issue and special matter—verification of pleas, &c. Proviso.
13. Damages, how assessed when judgment by default.
14. When judgment by default set aside.
15. Affidavits made in court to be filed.
16. Actions on penal bonds—breaches of covenants—penalty to stand as security—damages, &c. Proviso relative to notice to defendants or attorney.
17. Set off—plea and notice—judgment for defendant.
18. Peremptory challenges—documentary evidence—nonsuit, &c.
19. Bills of exceptions part of the record—refusal of Judge to allow—remedied by the Supreme Court.
20. Verdict—how rendered. Exceptions, motion for new trial, arrest of judgment. Grounds for motion, stay of proceedings, limitation, &c.
21. General verdict—how sustained.
22. Judgment by confession, release of errors, record in such cases, &c.
23. Judgment arrested for *error*—*order* of court.
24. Fee book of clerk—what it shall set forth. A public record. Bill of costs to accompany execution—how collected, &c.
25. Bill of costs to correspond with fee book—otherwise void. Names of witnesses, and attendance to be stated in the same.
26. Docket book. Character and correction of fee book.
27. Judgment docket—order thereof. Duty of clerk. Detailed satisfaction of judgment—penalty for neglect—how recovered, &c.
28. Remedy against sheriff for refusal to return execution—party may apply for relief. Duty of courts to grant order—its requirements, &c. Proviso.
29. Return of executions to be entered—penalty for failure.
30. Writs of summons—how served.
31. How served against corporations.
32. How against county commissioners.
33. Costs for plaintiff in actions of tort, where damages are less than fifty dollars.
34. Division in opinion in court on hearing an appeal.
35. Charge of District Court confined to law.
36. Scrawl equal to seal.
37. Incompetent witnesses.
38. Non-joinder in appeal or writ of error not to affect proceedings thereon.
39. Minors may sue by next friend.
40. Interpreters.
41. Declaration not necessary to be filed in *scire facias* to revive judgment.
42. Execution with attachment served on garnishee.
43. Judgment against garnishee.
44. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all writs issued by any court in this Territory, shall run in the name of the United States of America, and bear test in the name of the clerk of said court, and shall be sealed with the seal of said court, and made returnable to the first day of the next term after the date of said writ.

Sec. 2. It shall be the duty of the sheriff or coroner to serve all process of summons or *capias*, when it shall be practicable, ten days before the return day thereof, and to make return of such process to the clerk who issued the same, by or on the return day, with an endorsement of his service, the time of serving it, and the amount of his fees: *Provided*, That when such process shall have been directed to a foreign county, the officer executing the same may make return thereof by mail, and the clerk may charge the postage and tax the amount in his fee bill.

Sec. 3. If it shall not be in the power of such sheriff or coroner to serve such summons or *capias* ten days before the return day thereof, he may execute the same at any time before, or on the return day, but in such case the defendant or defendants shall be entitled to a continuance, and shall not be compelled to plead before the next succeeding term.

SEC. 4. Whenever it shall appear, by the return of the sheriff or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another summons or *capias* (as the case may be), and so on until service be had, and the defendant or defendants be summoned or brought into court, and if such summons or *capias* be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment in the same manner as if the defendants were in court; and any judgment so obtained shall be valid against the defendant or defendants, on whom the process has been served, and the plaintiff or plaintiffs may, at any time afterwards, have a summons in the nature of a *scire facias* against the defendant or defendants not served with the first process, as aforesaid, to cause him, her, or them to appear in the said court, and show cause why he, she, or they should not be made a party to such judgment; and the court shall thereon proceed to hear and determine the matter, in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case, shall be, that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendants in the former judgment, the amount of his debt or damages, as the case may be.

SEC. 5. If any sheriff or coroner, to whom any summons or *capias* shall be delivered, shall neglect or refuse to make return of the same, before or on the return day of such process, the plaintiff may enter a rule, requiring said sheriff or coroner to make return of such process, on a day to be fixed by the court, or to show cause on that day, why he should not be attached for a contempt of the court; and the plaintiff shall thereupon cause a written notice of such rule to be served on such sheriff or coroner; and if good and sufficient cause be not shown to excuse such officer, the court shall adjudge him guilty of a contempt, and shall proceed to punish such officer, as in other cases of contempt.

SEC. 6. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account, on which the action is brought, in case the same be brought on a written instrument or account, ten days before the court, at which the summons or *capias* is made returnable; the court, on motion of the defendant, shall continue the cause at the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial; and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment, as in case of nonsuit.

SEC. 7. The clerks of the District Court of this Territory, shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the name of the plaintiff's attorney; and he shall furnish the Judge and the bar at each term with a copy of the same, in which all indictments and causes to which the United States may be a party, shall be first set down: second, all indictments or causes, to which the Territory of Oregon may be a party; all cases in law, in order, according to the date of their commencement: and lastly, the suits in chancery; and the clerk shall also set and apportion the causes, for as many days of the term as he may think necessary, or be directed by the Judge, and all subpœnas for witnesses shall be made returnable on the day on which the cause in which the witnesses are to be called, is set for trial.

SEC. 8. The clerk shall, from time to time, issue subpœnas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend, is set for trial; and every clerk, who shall refuse so to do, shall be fined at the discretion of the court, in any sum not exceeding one hundred dollars.

SEC. 9. In all cases pending in any District Court of this Territory, if both parties shall agree, both matters of law and fact, may be tried by the court.

SEC. 10. The several District Courts shall have power, in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice thereof given, to require the parties, or either of them, to produce books or writings in their possession or power, which contain evidence pertinent to the issue; and it shall be the duty of the defendant or defendants, in all cases where he, she, or they intend to prove on trial, any accounts or demands against the plaintiff or plaintiffs, to file with his plea, a bill of the particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved to the jury or court on that trial.

SEC. 11. On the appearance of the defendant or defendants, the court may allow such time to plead, as may be deemed reasonable and necessary; and for want of appearance, may give judgment by default on calling the cause, except in cases where the process has not been served, or declaration filed ten days before the term of the court; but all the cases shall be tried or otherwise disposed of, in the order they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct. And whenever either party shall apply for the continuance of a cause, on account of the absence of testimony, the motion shall be grounded on the affidavit of the party so applying, or his, her, or their authorized agent, showing that due diligence has been used to obtain it, and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses, and also that affiant knows of no other witness by whom the particular fact or facts could be proved; and should the court be satisfied, that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.

SEC. 12. The defendant may in his defence, plead specially, or may plead the general issue, and give notice in writing under the same, of the special matters intended to be relied on, for defence on the trial; under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been specially pleaded, and issue taken thereon; but no person shall be permitted to deny on trial, the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be set up by way of defence or set-off, unless the person, so denying the same, shall file his or her affidavit, denying the execution of such instrument: *Provided*, If the party making such denial be prosecuting or defending said suit, as executor or administrator, it shall be sufficient to state in such affidavit the belief of the party making the same, according to his or her best knowledge, that such instrument was not executed by the testator or intestate.

SEC. 13. Whenever judgment shall be given against the defendant or defendants, by default, in any action brought on any instrument of writing for the payment of money only, the court may direct the clerk to assess the damages by computing the interest and principal, and report the same to the court, upon which final judgment shall be given; and in all other actions, where judgment shall go by default, the plaintiff may have his damages assessed by a jury in court.

SEC. 14. The court may in its discretion, before final judgment, set aside any default upon good and sufficient cause, upon affidavit, upon such term and conditions as shall be deemed reasonable: *Provided*, That no judgment by default shall be set aside, unless the motion is made at the term said judgment was rendered.

SEC. 15. All affidavits made in court during the progress of any cause, and relating thereto, shall be filed and preserved by the clerk.

SEC. 16. In all actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration, as many breaches as he may think fit; and the jury, whether on trial of the issue or inquiry, shall assess the damages for so many breaches as the plaintiff shall prove; and the judgment for the penalty shall stand as a security for such other breaches as may afterwards happen, and the plaintiff may, at any time afterwards, sue out a writ of inquiry, to assess damages for the breach of any covenant or covenants contained in such bond, subsequent to the former trial of inquiry; and whenever execution shall be issued on such judgment, the clerk shall endorse thereon the amount of the damages assessed by the jury, with the costs of suit; and the sheriff or coroner (as the case may be), shall only collect the amount so endorsed: *Provided*, That in all cases when a writ of inquiry of damages shall be issued, for any such breach subsequent to the first trial or inquiry, the defendant, his agent or attorney, shall have at least ten days' notice, in writing, of the time of executing the same.

SEC. 17. The defendant or defendants, in any action brought upon any contract or agreement, either express or implied, having claims or demands against the plaintiff in such action, may plead the same, or give notice thereof under the general issue, as is provided in the twelfth section of this act; and the same, or such part thereof as the defendant shall prove on trial, shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due; and if it shall appear that the plaintiff be indebted to the defendant, the jury shall find a verdict for the defendant, and certify to the court the amount so found; and the court shall give judgment in favor of such defendant, for the amount so certified, with the costs of his defence, and execution shall be issued on such judgment as in other cases.

SEC. 18. In all civil actions, each party shall be entitled to a challenge of three jurors, without showing cause for such challenge; and when the jury retire to consider of their verdict, they shall be permitted to take any papers that may have been used in evidence on the trial, and no plaintiff shall suffer a nonsuit on the trial, unless he do so before the jury retire from the bar.

SEC. 19. If, during the progress of any trial in any civil cause, either party shall allege an exception to the opinion of the court, and reduce the same to writing, it shall be the duty of the Judge to allow the said exceptions, and to sign and seal the same, and the said bill of exceptions shall, thereupon, become a part of the records of such cause; and if any Judge of the District Court shall refuse to allow or sign such bill of exceptions tendered, and the same is signed by three or more disinterested bystanders or attorneys of said court, the Judge shall then permit the said bill to be filed and become a part of the record: if the Judge refuse, the Supreme Court of this Territory may, when such cause is brought before them by writ of error or appeal, upon proper affidavit of such refusal, admit such bill of exceptions as a part of the record.

SEC. 20. It shall be sufficient for the jury to pronounce their verdict by their foreman in open court, without reducing the same to writing, and the clerk shall enter the same in form under the direction of the court; and if either party may wish to except to the verdict, or for other causes to move for a new trial, or in arrest of judgment, he shall, before final judgment be entered, give by himself or counsel, to the opposite party or his counsel, the points in writing, particularly specifying the grounds of such motion, and shall also furnish the Judge with a copy of the same, and final judgment shall thereupon be stayed until such motion can be heard by the court. But no more than two new trials shall be granted to the same party in the same cause, nor shall any verdict or judgment be set aside for irregularity only, unless cause be shown for the same, during the sitting of the court, at the term such verdict or judgment shall be given.

SEC. 21. Whenever an entire verdict shall be given on several counts, the same shall not be set aside or reversed, if any one or more of the counts be good.

SEC. 22. Any person for debt, *bona fide* due, may confess judgment by himself, or attorney duly authorized, without process, and every confession of judgment, whether with or without process, shall operate as a release of errors on the entering up of the judgment, or making record thereof; and in no case, except when the title of land shall come in question, shall it be necessary for the clerk to make a complete record, unless especially requested by one of the parties, who shall pay the costs of the complete record.

SEC. 23. When judgment shall be arrested for any defect in the records or proceedings after the first process, the plaintiff shall not be compelled to commence his action anew, but the court shall order new pleadings to commence with the error that caused the arrest.

SEC. 24. The clerks of the several district courts shall keep a fee book, in which shall be clearly and distinctly set down, in items under the proper title, the costs of each suit, including the sheriff's and witnesses', as well as the clerk's fees, noting distinctly what fees have accrued on the part of each party, which fee book shall be a public record; and whenever suit shall be determined, and final judgment entered, the costs and charges of each party litigant shall be made up, and together with the costs of the prevailing party, shall be included in the judgment, and the clerk shall always send out a bill of such costs with the execution, and the costs of the party failing in the suit shall be collected in the manner prescribed by law.

SEC. 25. If any clerk shall issue a fee bill, or a bill of costs, with the execution, without first entering the same in his fee book, or if any such bill of costs, or fee bill, shall be issued, which shall not be in substance a copy of the recorded bill, the same shall be void, and any person having paid such bill of costs, or fee bill, may recover from the clerk the amount thereof, with costs of suit, in any court having cognizance thereof; and in every bill of costs to be made or recorded as aforesaid, the names of the witnesses shall be stated, with the number of days each attended at every term.

SEC. 26. It shall not be necessary to insert in the judgment, other than the docket book, the costs of the prevailing party, except in cases when a complete record shall be required, but the fee book of the clerk shall be taken and deemed a part of the record, subject however, at all times to be corrected by the court.

SEC. 27. The clerks of the several District Courts shall provide and keep in their respective offices, a well bound book, for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts; and it shall be the duty of the said clerks during every term, or within thirty days thereafter, to enter in such book, in alphabetical order, the name of the person against whom the judgment or decree was rendered, which shall contain in columns ruled for that purpose, the names of the parties, the date, the nature of the judgment or decree, the amount of the debt, damages, and costs, the book and page in which it is entered, and leaving a blank column or columns for entering a note or memorandum of the satisfaction or other disposition thereof; and when any judgment or decree shall be satisfied by execution or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof, in the column left for that purpose, showing how disposed of; and the date, book, and page, where the evidence thereof is recorded, and such docket, may be searched by persons at all reasonable times without fees; and every clerk who shall fail to keep such docket, or to enter therein any judgment or decree, as aforesaid, shall forfeit and pay a sum not exceeding one hundred dollars, nor less than twenty-five dollars, and costs of suit; the one half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same, to be recovered by action of debt before the District Court.

SEC. 28. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution to him delivered, when the same shall be returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the party suing out execution, on giving to said sheriff or coroner five days' notice, in writing, of his, her, or their intention to apply to the court for relief, and it shall be the duty of the court, on proof by affidavit of the delivering of such application, if the same be not returned, or on proof that such money has been collected and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution; or if the amount, or any part thereof, has been collected, to pay over the same immediately, with twenty per cent. thereon from the time of collection till paid; and on failure of such sheriff or coroner to comply with such order on demand, and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly, or the plaintiff in such execution may have judgment for the money, with twenty per cent. thereon, so collected, and have execution, as in other cases: *Provided*, That in such cases no stay of execution shall be allowed.

SEC. 29. The clerk shall enter in a book to be kept by him for that purpose, the return of the sheriff or coroner of all executions, within thirty days after the same shall be returned, under the penalty imposed in the twenty-seventh section of this act.

SEC. 30. That all writs of summons issuing from any Court of Record in this Territory, shall be served by reading to the defendant, if found, and if not found, by leaving a copy thereof, attested by the officer serving the same, at his dwelling-house, or usual place of abode.

SEC. 31. That in all suits against any corporation, the summons shall be served by leaving an attested copy thereof with the clerk, cashier, secretary, agent, or any other officer having charge of their business; and if there be no such officer found within the county, the summons may be served on any member of the corporation.

SEC. 32. That in all suits against the Board of commissioners of any county in this Territory, the summons shall be served by leaving an attested copy thereof with one of the commissioners, or with the clerk of the Board of county commissioners.

SEC. 33. That in all actions of tort brought originally in any of the District Courts of this Territory, if the plaintiff recover less than fifty dollars, such plaintiff shall recover no more costs than damages.

SEC. 34. Whenever the Supreme Court shall be equally divided in opinion on hearing an appeal or writ of error, the cause shall stand continued until all the Judges are on the bench.

SEC. 35. The court in charging the jury, shall only instruct them as to the law of the case.

SEC. 36. That any instrument of writing to which the maker shall affix a scrawl, by way of seal, shall be of the same effect and obligation to all intents, as if the same was sealed: *Provided*, That the seal be referred to in the body of the instrument.

SEC. 37. A negro, mulatto or Indian shall not be a witness in any court, or in any case against a white person.

SEC. 38. That in all cases where a judgment or decree shall be rendered in any District Court, in any case whatever, either in law or chancery, against two or more persons, either one of the said persons shall be permitted to remove said suit to the Supreme Court, by appeal or writ of error, and for that purpose shall be permitted to use the names of all said persons, if necessary; but no costs shall be taxed against any person who shall not join in said appeal, or writ of error; and all such cases shall be determined in said Supreme Court, as other suits are, and in the same manner that it would have been, if all the parties had joined in said appeal or writ of error.

SEC. 39. Hereafter, minors may bring suits in all cases whatsoever, by any person that they may select as their next friend; and the person so selected shall file a bond with the clerk of the District Court, or Justice of the Peace, before whom the suit may be brought, acknowledging himself bound for all costs that may accrue, and legally devolve upon such minor; and after bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases.

SEC. 40. Interpreters may be sworn truly to interpret, when necessary.

SEC. 41. No declaration shall hereafter be considered necessary to be filed in any *scire facias* to revive a judgment.

SEC. 42. That any person having obtained a judgment before any court of record within this Territory, against any defendant, the plaintiff, upon filing an affidavit, setting forth that the plaintiff verily believes that the defendant has not in his possession, within the knowledge of any such affiant, any visible property or effects, sufficient to satisfy said judgment and costs, and that the said affiant believes that the defendant in the judgment has property, rights, or credits (as the case may be, stating the particulars of the case), in the hands of A. B. (naming him), an execution upon such judgment may issue, containing an attachment clause, which shall be served upon any such garnishee, requiring him to appear at the return of such execution, and answer interrogatories touching his indebtedness to the said defendant in execution, at or subsequent to the time of the service of such attachment.

SEC. 43. That if any such garnishee shall be found to be indebted to the defendant, in any such execution, a judgment shall be rendered against any such garnishee for the amount for which he admits himself to be indebted in his said answer, or so much thereof as will satisfy any such execution, with costs of suit, and of the attachment; and any such judgment against the garnishee shall bind all such property, effects, rights, and credits in the hands of such garnishee, and the payment of the amount of the judgment by such garnishee, shall operate as a conclusive bar to the right of any such defendant in execution to recover the amount paid under this process, against any such garnishee.

SEC. 44. This act to take effect and be in force, from and after its passage.

Passed the House of Representatives, February 3d, 1851.
Passed the Council, February 4th, 1851.

PROBATE CLERK.

AN ACT, *to establish the office of Probate Clerk.*

(210)

SEC.
1. Election of—how returns made in case of tie.
2. Qualifications of clerk.
3. Oath of office. Bond, condition of.
4. Certificate of election endorsed by Judge. Where recorded.
5. By whom recorded. Copy—evidence.
6. Clerk to preserve the property belonging to his office — provide the books. Where office kept.
7. Record of rules, judgment, &c. Process. Account of moneys received—final settlement.
8. Deputies, qualifications of. Clerk responsible for acts of deputies.

SEC.
9. For what causes clerk may be removed.
10. When clerk guilty of misdemeanor, how prosecuted. Court may appoint temporary clerk in such cases.
11. Same subject.
12. Same subject.
13. If clerk removed, or die, &c., books, papers, &c., to be delivered to successor.
14. Same subject.
15. Clerk to reside in county.
16. When act to take effect.

* * *

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected, biennially, in each county in this Territory, a clerk of the Probate Court; said election shall be conducted as other elections are in this Territory; but the returns of elections held for the election of said clerk of Probate Court, shall be made to the presiding Justice of the Probate Court; and if there be a tie or contested election, it shall be determined by the Probate Court of the proper county.

SEC. 2. No person shall be elected clerk of the Probate Court, unless he be an American citizen, above the age of twenty-one years, and shall have resided six months in this Territory, and within the county for which he is elected three months before the election.

SEC. 3. Every clerk, before he enters on the duties of his office, shall take an oath before the Judge of the District Court, or the presiding Judge of the Probate Court of the proper county, to support the Constitution of the United States, and the laws of this Territory, and faithfully demean himself in office; and shall enter into bond with good security in any sum not less than dollars, the amount to be fixed, and the bond to be approved by the Probate Court, or by a majority of Judges of such court in vacation; the bond to be conditioned that he will faithfully perform the duties of his office, and pay over all moneys which may come to his hands by virtue of his office; and that he, his executors or administrators, will deliver to his successors, safe and undefaced, all books, papers, records, seals, apparatus, and furniture appertaining to his office.

SEC. 4. The certificate of each clerk of the Probate Court, signed by the presiding Judge of said court, shall be deposited in the office of the secretary of the Territory, with the approval of the Judges thereon endorsed first having been recorded in the clerk's office of the District Court for the proper county.

SEC. 5. All bonds of clerks deposited in the office of the secretary of the Territory, shall be by him recorded in a book kept by him for that purpose; and a copy of any such bond, or the record thereof, certified by the secretary of the Territory, shall be received in evidence as the original in any court, without proof of execution.

SEC. 6. Each clerk shall preserve the seal, and other property of, or belonging to his office; and shall provide and preserve suitable books, stationery, furniture, and other necessaries for the office, and keep correct account thereof; and the court shall settle such accounts, and allow such sums as shall be reasonable, to be paid out of any moneys appropriated for such expenditures. Each clerk shall keep his office at the county seat, so soon as suitable buildings are prepared for that purpose; and shall there keep the records, papers, seal, and other property belonging to his office, and transact his official business.

SEC. 7. Every clerk shall seasonably record the judgments, rules, orders, and other proceedings of the court; make a complete alphabetical index thereto; issue and attest all processes, when required by law, and affix the seal of his office thereto, or, if none be provided, then his private seal; keep a correct account of all moneys coming to his hands, and accruing to the county, or Territory, on account of taxes, fines, or otherwise; make final settlement with the court at such time as may be fixed by law, or by rule of the court, and pay over all balances.

SEC. 8. Every clerk may appoint one or more deputies, to be approved of by the court, who shall possess the same qualifications, except the age, and take the like oaths as their principals, and may, in the name of their principals, perform the duties required of their principals; but all clerks shall be responsible for the conduct of their deputies.

SEC. 9. If any clerk shall knowingly and willingly do any act contrary to the duties of his office; or shall knowingly or willingly fail to perform any act or duty required of him by law, or by rule of said court, he shall be deemed guilty of misdemeanor in office, and shall be removed from office for the same.

SEC. 10. When the Probate Court, or a majority of the Judges thereof in vacation, shall believe, from their own knowledge or information of others, on oath or affirmation, that their clerk has been guilty of misdemeanor in office, they shall give notice thereof to the attorney of the District Court of the proper county, stating the charges against such clerk, and requiring him to prosecute the same; and they may suspend such clerk from office until trial can be had, and appoint a temporary clerk, who shall possess the same qualifications, take the same oath, and give bond, as is required of clerks; possess the same power, perform the same duties, and receive the same fees as clerks; and continue in office till the clerk resumes his office, or a successor shall be elected and qualified.

SEC. 11. When the District Attorney shall be required to prosecute charges against any clerk, he shall make out charges, and cause a copy to be served on the clerk, with a notice, requiring him to appear before the District Court of the county where such clerk resides, on some specific day, in term, and answer the charges.

SEC. 12. The said notice, and a copy of the charges, shall be delivered to such clerk fifteen days before the day appointed; and the attorney for the district shall file such charges, and cause such witnesses to be summoned to support the same, and shall prosecute such charges with speed; and such clerk shall appear and plead at the next term, unless further time be given him to plead.

SEC. 13. If any clerk resign, or be removed from office, or die, he or his executors or administrators shall deliver all records, books, papers, files, seal, and other things belonging to his office, to his successor as soon as appointed, who shall take charge of the same.

SEC. 14. Any clerk who shall resign or be removed from office, or the executors or administrators of any clerk who may die, shall render to the court of which he was clerk, at the next term after such death, resignation, or removal, a perfect account, on oath, of all money by him received, by virtue of his office, not before accounted for; and shall settle with such court as if the clerk was still in office; and for that purpose they shall have free access to said office, and the records, papers, books and files therein: and the court may compel such settlement, and enforce the payment of any balance by attachment.

SEC. 15. Every clerk shall reside in the county of which he is clerk.

SEC. 16. This act to take effect, and be in force, from and after its passage.

AN ACT, *supplementary to an act entitled "An Act to establish the office of Probate Clerk." Passed at the last Legislative Assembly.*

1. Clerk to record all papers required by law.
2. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That it shall be, and the same is hereby made the duty of the clerk of the Probate Court, in each county of this Territory, to record all deeds, bonds, mortgages, conveyances, town plats, and all or any other instrument or instruments of writing required by law to be recorded.

SEC. 2. *Be it further enacted,* That this act shall take effect, and be in force, from and after its passage.

Passed, May 16th, 1850.

PROBATE COURT.

{211}

AN ACT, *to establish a Probate Court, and define its duties and powers.*

SEC.

1. Election and qualification of Judges. Style of court
2. Whom elected by. Term of Office.
3. How election certified. To whom. In case of tie, sheriff to order a new election.
4. Vacancies, how filled.
5. Clerk to certify the names of Judges elect to Governor. Governor to commission such Judges.
6. Exclusive and original jurisdiction of Probate Court. Concurrent jurisdiction with the District Court. Appeals. Power to award process and examine persons
7. Majority to be a quorum. Less than a quorum may adjourn from day to day, &c.
8. Judges to choose a president from their own number. President *pro tem.*
9. Court to provide and keep a seal.
10. Private seal of clerk to have full force in law, where no official seal provided.
11. Probate Court. A Court of Record.
12. Of entries of orders and proceedings, when minutes signed by the Judges.
13. Sittings of the court to be public.
14. Court to have power to issue all writs,

SEC.

&c., according to the principles and usages of law.

15. Office of sheriff or coroner vacant, &c. Court may appoint persons to execute process. Their fees.

16. Court may enforce return by attachment.

17. When Judge incapable of sitting in a cause.

18. If majority incapable, cause to be certified to District Court.

19. If court not opened by the third day, to stand adjourned until the next term. Special terms, how held.

SEC.

20. Judge to be conservator of peace within his county.

21. Court may order questions to be tried by jury.

22. Trials by jury to be governed as in District Court.

23. Writs and process—how tested.

24. Court to have same power to enforce their orders, judgments, decrees, &c, as District Courts.

25. Clerk to grant letters of administration in vacation Letters testamentary to be granted by the court in term time. How attested.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected in each county in this Territory, three suitable persons, who shall be American citizens, having the qualifications of a voter, having resided in this Territory one year, and in the county, where elected, six months previous to their election, and be styled the Judges of Probate, and the court hereby constituted shall be styled the Probate Court.

SEC. 2. That the said Judges of the Probate Court shall be elected by the qualified electors in the several counties in this Territory; and shall hold their office for three years, and until their successors are elected and qualified.

SEC. 3. That the election shall be certified by the judges and clerks of the election, to the clerk of the Probate Court of the county wherein such election shall be held, and in case of a tie between two or more persons, the sheriff shall order a new election.

SEC. 4. That when any vacancy or vacancies shall happen in the Probate Court, the clerk of said court shall notify the sheriff of the proper county, whose duty it shall be to issue his proclamation to the voters of the county, by putting up three notices in each precinct in the county, setting forth the office or offices that are to be filled, the time and place said election is to be held, which time shall be at least ten days from the putting up of said handbills, and the said election shall be conducted as prescribed by law for the general elections for the Territory of Oregon.

SEC. 5. The clerk of the Probate Court shall certify the names of the persons elected under this act to the Governor of the Territory, who shall thereupon commission all such persons as Judges of the Probate Court for the term for which he or they may have been elected.

SEC. 6. That the Probate Court, in their respective counties, shall have and possess the following powers: Exclusive and original jurisdiction in all cases relative to the probate of last wills and testaments; the granting of letters testamentary and of administration, and revoking the same; the appointing or displacing guardians of orphan minors, and persons of unsound mind; and the binding of apprentices; in the settlement and allowance of accounts of executors, administrators, and guardians; to hear and determine all disputes and controversies respecting wills, the right of executorship, administration, or guardianship, or respecting duties or accounts of executors, administrators, or guardians; and to hear and determine all disputes and controversies between masters and their apprentices; to hear and determine all suits and other proceedings instituted against executors and administrators, upon any demand against the estate of their testator or intestate, where such demand shall not exceed one hundred dollars; concurrent jurisdiction with the District Court in all such cases where the demand shall exceed that sum, subject to an appeal, in all cases, to the District Court, in such manner as may be provided by law; to award process, and cause to come before them all and any person or persons whom they may deem it necessary to examine; whether parties or witnesses, or who, as executors, administrators, or guardians, or otherwise shall be intrusted with, or in any wise accountable for any lands, tenements, goods, or chattels, belonging to any minor, orphan, or person of unsound mind, or the estate of any deceased person; and may examine any person, on oath or affirmation, touching any matter of controversy before them.

SEC. 7. That a majority of the Judges of the Probate Court shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and require the attendance of absent members.

SEC. 8. That the Judges of the Probate Court, or a majority of them, shall choose one of their own number to be president of the court, and in case of his absence may appoint a president *pro tempore.*

SEC. 9. That said court shall provide and keep a seal, with such emblems and devices as the court shall think proper; the impression of which shall be a sufficient sealing, in all cases where sealing is required.

SEC. 10. That where no official seal is provided, the clerk may use his private seal for the authentication of any record, process, or proceeding required by law to be authenticated by the seal of his court; and the attestation of the clerk stating that he has no seal of office, and that he has affixed his private seal, shall be received as sufficient authentication without requiring any proof of such private seal, or that it was affixed by the clerk.

SEC. 11. That the court established by this act shall be a Court of Record, and shall keep just and faithful records of its proceedings.

SEC. 12. That full entries of the orders and proceedings of each day shall be read in open court, on the morning of the succeeding day, except on the last day of the term, when the minutes shall be read and signed by the Judges of said court, or a majority of them, at the rise of the court.

SEC. 13. That the sittings of the Probate Court shall be public, and the citizens may freely attend the same.

SEC. 14. That the court established by this act shall have power to issue all writs which may be necessary in the exercise of its jurisdiction, according to the principles and usages of law.

SEC. 15. That where there is no sheriff or coroner, or either of them (is not) qualified to act, or both are interested or prejudiced, the court may appoint one or more persons to execute their process, and perform any other duty of the sheriff, who shall be entitled to such fees for his services as are allowed by law to sheriffs in like cases.

SEC. 16. That said court may enforce by attachment the return of any writ or process sent out of the same, and the payment of any moneys had and received by any sheriff, coroner, collector, or any other person whose duty it is made by law to pay over; and the delivery of papers intrusted to him officially, and unlawfully withheld.

SEC. 17. That no Judge of the Probate Court shall sit on the determination of any cause or proceeding in which he is interested, or related to either party, or shall have been of counsel.

SEC. 18. That if the majority of the Judges of the Probate Court shall be interested in any cause or proceeding pending before them, or related to either party, the same shall be certified with the original papers to the District Court of the county, which shall proceed thereon to final judgment and determination, the same as the Probate Court might have done.

SEC. 19. That if said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day; if at that time a majority of the Judges shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term, upon its being so ordered by the court in term-time, and entered by the clerk on the records of the court.

SEC. 20. That each Judge of the Probate Court shall be a conservator of the peace throughout his county.

SEC. 21. That when any issue is pending proper to be tried by a jury, the court in its discretion may order a jury to be summoned by the sheriff, or selected in any manner as may be prescribed by law, for selecting juries in the District Courts.

SEC. 22. That trials by jury in said court shall be governed, in all cases, as similar trials in the District Court; and writs of inquiry may, in like manner, be awarded and executed, the verdicts of juries be set aside, and new trials granted.

SEC. 23. That all process issuing out of the Probate Court shall be tested by the clerk, and sealed with the seal of said court.

SEC. 24. That the Probate Court shall have the same power and authority, under like restrictions and rules of law, to enforce and execute their orders, rules, judgments, and decrees, as may be prescribed by law for the District Courts of this Territory.

SEC. 25. That it shall be the duty of the clerk of said Probate Court, to issue letters of administration to any person applying for the same, in vacation of said court; subject, however, to the approval or disapproval of said court at its next session; and subject to all the restrictions and liabilities provided for by law; and subject at any time to the investigation of said Probate Court: *Provided, however*, That where there is a last will and testament of any deceased person, letters of administration or executorship shall be granted by the said Probate Court when said court is in open session; and said letters of executorship or administration shall be signed by the said court, and certified by the clerk thereof.

Passed in Council, September 3d, 1849.

AN ACT, *supplementary to "An Act to establish a Probate Court, and define its duties and powers;" and "An Act, authorizing the Probate Court to do county business."*

SEC.

1. Manner of proceeding—practice, &c.
2. When and where courts be held.
3. Court to inspect assessor's books, and levy county tax.
4. Court to provide rooms for District Court, where there is no Court House.
5. Extra sessions—when and how held.
6. For what court may punish as for criminal contempt.
7. Punishment for contempt—how made.
8. What contempt may be punished summarily, and when notice and time given.
9. Accusation to be set forth in warrant of commitment
10. No person to be proceeded against as for contempt, for the purpose of enforcing rights or remedies.
11. Persons punished for contempt, subject to indictment—sentence of the court.
12. Appeals to the District Court—when allowed.
13. Time of taking appeal.
14. Appellant, his agent, &c., to file affidavit.

SEC.

15. Appellant to give bond—condition of, &c.
16. As to what appeal operates as *supersedeas*.
17. Clerk to transmit certified copy of record, and original papers.
18. District Court to hear and determine the appeal without regard to errors below.
19. Clerk of District Court to certify transcript and original papers to the court below. Proceedings thereon.
20. Court authorized to erect Court Houses and jails.
21. Court to lay off county seat, sell lots, &c.
22. When court, and when clerk to sell lots.
23. When lot sold, clerk to execute a bond for deed—condition of, &c.
24. Proceeds of sales, application of, &c.
25. County lines to be surveyed.
26. Clerk to provide book, enter the names of purchasers, number of lot, &c.
27. Lots sold prior to the passage of this act. How disposed of.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the practice and proceedings in the Probate Court shall be in a summary way, and pleadings therein shall not be required to be in writing in any case, except when expressly required by law, or by the direction of the court; and all writs, suits, and proceedings in said court, shall be amendable at the discretion of the court.

SEC. 2. The Probate Court shall meet in each and every county, at the Court House, or at the usual place of holding the District

Court, for such county, on the first Monday in April, July, September and December, in each and every year: *Provided, however*, If the District Court shall meet on any of the before-mentioned days, the Probate Court shall meet on the Monday preceding.

SEC. 3. It shall be the duty of the Probate Court, on the first Monday in September in each year, to receive and inspect the assessor's books, and levy the county tax, according to law, and cause their clerk to make out a duplicate for collection accordingly.

SEC. 4. In any county where there is no Court House provided, it shall be the duty of the Probate Court to provide suitable rooms for the holding of the District Court of said county.

SEC. 5. The said court may hold extra sessions when the members thereof may think the business of the county require it; and notice by any two of the members of the court to the other shall be a sufficient call for such term, five days' notice thereof being given, by advertisement, signed by the clerk, and posted up at three of the most public places in the county, of the time and place of holding such court.

SEC. 6. The said court shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts, and no other:—

1st. Disorderly, contemptuous, or insolent behavior, committed during its sittings, in immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2nd. Any breach of the peace, noise, or other disturbance, directly tending to interrupt its proceedings.

3rd. Wilful disobedience of any process or order lawfully issued or made by it.

4th. Resistance wilfully offered by any person to the lawful order or process of the court.

5th. The contumacious and unlawful refusal of any person to be sworn as a witness, and when so sworn, the like refusal to answer any legal and proper interrogatory.

SEC. 7. Punishment for contempt may be by fine, or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; the fine in no case shall exceed the sum of fifty dollars, nor the imprisonment ten days; and where any person shall be committed to prison for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

SEC. 8. Contempts committed in the immediate view and presence of the court, may be punished summarily; in other cases, the party charged shall be notified of the accusation, and have a reasonable time to make his defence.

SEC. 9. Whenever any person shall be committed for any contempt specified in this act, the particular circumstances shall be set forth in the order or warrant of commitment.

SEC. 10. Nothing contained in the preceding section of this act shall be construed to extend to any proceeding against parties or officers, as for contempt, for the purpose of enforcing any civil right or remedy.

SEC. 11. Persons punished for contempt under the preceding provisions, shall notwithstanding be liable to indictment for such contempt, if the same be an indictable offence; but the court before which a conviction shall be had on such indictment shall, in forming its sentence, take into consideration the punishment before inflicted.

SEC. 12. Appeals shall be allowed from the decision of the Probate Court to the District Court, in the following cases, to wit:

1st. On all demands against an estate exceeding thirty dollars.

2d. On all settlements of executors and administrators.

3d. On all apportionments among creditors, legatees, or distributees.

4th. On all orders directing the payment of legacies, making distribution, or making allowances to the widow.

5th. On all orders for the sale of personal estate, because distribution cannot be made in kind.

6th. On all orders for the sale of real estate.

7th. On all judgments for waste.

8th. On proceedings to recover balances escheated to the Territory.

9th. On orders revoking letters testamentary or of administration.

10th. On orders making allowances for the expense of administration.

11th. On orders for the specific execution of contracts.

12th. On orders compelling legatees or distributees to refund, and in all other cases where there shall be a final decision of any matter arising under the provisions of this act.

SEC. 13. All appeals shall be taken within fifteen days after the term at which the decision complained of is made.

SEC. 14. The applicant for such appeal, his agent or attorney, shall file an affidavit, that the appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court.

SEC. 15. Every such appellant shall file in the court, if in term time, or with the clerk, if in vacation, the bond of himself or some other person, in a sum and with security to be approved by the court or clerk, as the case may be, conditioned that he will prosecute the appeal, and pay all debts, damages, and costs, that may be adjudged against him. This act shall not be so construed as to require any executor or administrator to enter into bond, in order to entitle him to appeal.

SEC. 16. After such affidavit and bond have been filed, the appeal shall be granted, but shall not be a *supersedeas* in any other matter relating to the administration of the estate, except that from which the appeal is taken.

SEC. 17. When such appeal is taken, the clerk shall transmit to the clerk of the District Court, a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

SEC. 18. Upon the filing of such transcript and papers in the office of the clerk of the District Court, the court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect, or other imperfection in the proceeding of the County Court.

SEC. 19. The clerk of the District Court shall certify a transcript of the record and proceedings, and the original papers to the court whence the appeal was taken, who shall proceed according to the decision of the District Court.

SEC. 20. The Probate Court shall have power to provide for the erecting and repairing of Court Houses and jails, and other necessary public buildings for the use of the county.

SEC. 21. That so soon as the county seat of any county shall be located, it shall be the duty of the Probate Court to take possession of any quantity of land including the location, not exceeding one hundred and sixty acres, the amount for which each county has a preëmption by the act of Congress, and cause the same, or so much thereof, as the court may see fit (if not already done), to be laid off into town lots, streets, alleys, and public squares, and sell and dispose of lots at private or public sale, as the court may determine will be most likely to bring the best prices.

SEC. 22. The court in term, or the clerk in vacation, under instructions entered upon the minutes of the court, may dispose of lots.

SEC. 23. When a lot shall be sold by virtue of the preceding section, the clerk shall execute in the name and on behalf of the Probate Court of the proper county, a bond for deed to said lot, provided the county shall receive one from the government.

SEC. 24. The Probate Court shall apply the proceeds of the sale of lots to the erecting of public buildings, and to no other purpose.

SEC. 25. It shall be the duty of said Probate Courts to cause their county lines to be surveyed, or such part of them as they may deem proper, whenever they may think it necessary.

SEC. 26. The clerk shall provide and keep a book, in which he shall enter the names of purchasers, the number of the lot, date of sale, and amount received.

SEC. 27. In towns already laid off, in which lots have been sold, the owner of such lot shall have preëmption right thereto, at the price which the court in its discretion, under all the circumstances, may determine and fix.

Passed the House of Representatives, September 28th, 1849.

PROBATE JUDGES.

(213)

An Act, *to authorize the election of Probate Judges.*

Sec.
1. When Probate Judges elected.

Sec.
2. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected in each and every county, three Judges of Probate, on the first Monday of June, a. d. 1850, and the said Judges shall hold their office, and discharge their duties as prescribed by law.

Sec. 2. *And be it further enacted,* That this act shall take effect and be in force, from and after its passage.

Passed, May 18th, 1850.

PROSECUTING ATTORNEYS.

An Act, *to provide for the election of Prosecuting Attorneys.*

(214)

Sec.
1. Number of districts.
2. How elected. Term of office.
3. Duties of prosecuting attorney.
4. Oath of office—by whom administered. Bond—condition of the same—where filed.

Sec.
5. Vacancies—how filled.
6. Attorneys to give advice to the civil officers of their district. Salary of the first district and second.
7. When act to take effect.

Section 1. The first and second judicial districts shall constitute one district for Prosecuting Attorney, and the third judicial district shall constitute the second district for Prosecuting Attorney.

Sec. 2. Prosecuting attorneys shall be elected by joint vote of both Houses, shall serve for two years from and after the end of the present session of the Legislature, and until their successors shall be elected and qualified.

Sec. 3. It shall be the duty of the prosecuting attorney of each district, to prosecute all pleas, plaints, indictments, and presentments, and prosecute all suits against delinquent sheriffs, and all persons who now are, or may hereafter be, indebted to the Territory, or any of the counties in their respective districts, where the Territory or the county may be a party, except in cases where the complaint shall be made in the name of the Territory, for the benefit of some third person.

SEC. 4. And the said prosecuting attorney, before he enters on the duties of his office, shall take an oath, which oath shall be administered by one of the district Judges of the district for which he may be elected, faithfully to discharge the duties of his office; which oath it shall be the duty of such Judge to administer, and endorse on the back of the commission; and he shall, moreover, execute a bond with security to be approved by such Judge, in the penalty of five thousand dollars, payable to the United States, conditioned for the faithful discharge of his duty as prescribed by law; and for the prompt payment of all sums of money that may come to his hands by virtue of said office, to the person or persons authorized to receive the same, which bond it shall be the duty of the said district Judge to take, and forward to the secretary of the Territory to be filed; and suit may be brought on the same for delinquency and defalcation as in case of other civil officers.

SEC. 5. That whenever a vacancy shall happen by the death, resignation, or removal from office of the prosecuting attorney in any district, it shall be the duty of the Governor, upon being notified of the same, to appoint some fit person to fill such vacancy until the next meeting of the Legislative Assembly.

SEC. 6. It shall be the duty of the said district attorneys, to give their advice to the civil officers of their respective districts, touching any matter in which the public may have an interest; and the said district attorney for the first and second judicial districts, shall receive an annual salary of six hundred dollars; and the prosecuting attorney for the third judicial district shall receive an annual salary of three hundred dollars, to be paid out of the territorial treasury.

SEC. 7. This act shall take effect, from and after its passage.

Passed, September 29th, 1849.

PUBLIC BUILDINGS.

AN ACT, *providing for the erection of Public Buildings.*

(215)

SEC.
1. County commissioners may order the erection of certain public buildings. When the same will cost over a certain amount, must be authorized by a vote of the county.
2. And the plan, site, &c. May purchase site, &c.
3. The cells of jails.
4, 5. Contracts for erecting, repairs, &c.,—how made, &c.

SEC.
6. Sheriff's charge of Court House.
7. How erections, repairs, &c, of public buildings paid for.
8. County commissioners to make estimates, and give notice when public buildings, &c, will cost over a certain amount. Tax therefor.
9. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be erected and finished in each county within this Territory, whenever the commissioners of the county may deem it necessary, a good and convenient Court House, a strong and sufficient jail or prison, for the reception and confinement of prisoners and criminals; also, one or more convenient fire-proof buildings, in some convenient place or places near the Court House, in which shall be kept the offices of the clerk of the Supreme Court, District Court, sheriff, recorder of deeds, county auditor, and county treasurer: *Provided, however*, That the commissioners aforesaid, may, at their discretion, provide and finish one or more suitable rooms, within the walls of the Court House, or other buildings, for the use of the whole or a part of the officers aforesaid, and the commissioners may assign such room or rooms to the sole and exclusive use of such officers as they may deem expedient: *Provided further*, That no public building, improvement, or purchase, referred to in this act, the cost of which will exceed twenty-five hundred dollars, shall be commenced, without a majority of the voters of such county shall, at the annual election previous, vote for such undertaking, by writing the words *building tax* upon the back of their ballots; and it is hereby made the duty of judges of election to keep and make a true return of such votes, in the same manner as for county officers.

SEC. 2. That every Court House, jail, or other building to be erected as aforesaid, shall be framed of such materials, and of such dimensions, and on such place or places as the commissioners shall direct, within the limits of the town wherein the seat of justice of such county shall be established; and they are hereby authorized to plan and project such buildings, and to purchase for the use of the county such ground as they may deem necessary, whereon to erect all or any part of the buildings aforesaid, the expense of which purchase shall be paid out of the county treasury.

SEC. 3. That the commissioners of each county are hereby authorized and required to build and construct, within the walls of each jail already erected, or which may hereafter be erected, one or more cells or dungeons, for the confinement of criminals sentenced to solitary imprisonment; and the commissioners are hereby authorized to furnish, repair, and alter any of the buildings specified in the first section of this act already erected, or which may be erected in any county within this Territory.

SEC. 4. That when the commissioners shall determine to erect any of the buildings aforesaid, or finish, repair, or alter any building already erected, or which may hereafter be erected, they may either receive sealed proposals for the performance of the whole, or any part of the labor, or for furnishing materials, or may sell the same at public auction to the lowest bidder; and the person making the best proposals, or the lowest bid (as the case may be), shall receive the contract, if, in the opinion of the commissioners, he is a proper person to undertake such works.

SEC. 5. That before the commissioners shall enter into any such contract, they shall give notice by advertisement, published at least three weeks in succession in a newspaper in general circulation in the county, or by posting up advertisements in five public places within the same, stating the day on which they will attend at the commissioners' office, in said county, for the purpose of receiving proposals, or selling at public auction (as the case may be), and entering into such contract; and the contractor shall enter into bond, payable to the Territory of Oregon for the use of the county, with such securities as the commissioners shall approve conditioned for the faithful performance of the contract, agreeably to the stipulations thereof; and on default of the contractor, or contractors, for want of attention or competent knowledge to carry on the work agreeably to contract, the said commissioners shall have power to declare the contract vacated, and shall proceed to make another contract as herein directed.

SEC. 6. That the sheriff shall have charge of the Court House, under the direction and control of the commissioners.

SEC. 7. That the commissioners are hereby authorized to receive donations of land, money, or other property, and to appropriate the same, together with any money in the county treasury belonging to the county, to the payment of the expense of erecting, finishing, repairing, or altering any of the buildings aforesaid.

SEC. 8. That whenever the commissioners of any county shall determine to make any improvement or purchase referred to in this act, the cost of which will exceed twenty-five hundred dollars, it shall be their duty to make an estimate of the same, and post it upon the door of the Court House in said county, at least twenty days before the annual election; and if a majority of the votes in said county are given in favor of said improvement or purchase, at said annual election, the county commissioners are hereby authorized to levy a tax sufficient to cover such estimate; and said additional tax shall be charged and levied on the same kinds of property which may be liable for county tax, and added to, and collected with said county tax, by authority of the same duplicate, in the same manner and within the same time that said county tax may be collected.

SEC. 9. This act to take effect and be in force, from and after the first day of June next.

Passed the House of Representatives, January 2d, 1851.
Passed the Council, January 15th, 1851.

(212)

An Act, *to provide for the selection of places for location and erection of the Public Buildings of the Territory of Oregon.*

Sec.
1. Seat of government established at Salem
2. Penitentiary at Portland.
3. University at Marysville.
4. Commissioners appointed—their duty. Bond required of acting commissioner.
5. Duty of acting commissioner. Compensation to be hereafter allowed by law.

Sec
6. To report to the Assembly, annually, account of moneys.
7. Vacancy to be filled by Governor, until the next session of Assembly.
8. Penitentiary for one hundred convicts
9. Commissioners appointed. Powers defined.
10. Act in force from its passage.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the seat of government of this Territory be, and hereby is, established and located at Salem, in the county of Marion; and each and every session, either general or special, of the Legislative Assembly of this Territory, hereafter convened, shall be held at the said place above named.

Sec. 2. The Penitentiary, or State or territorial prison of this Territory, shall be, and hereby is, located and established at Portland, in the county of Washington.

Sec. 3. That the university shall be, and hereby is, located and established at Marysville, in the county of Benton; and all appropriations or donations of money or personal property, and all the proceeds of the sale of land, or lands, granted or donated to this Territory for the establishment and endowment of a university, shall be applied to the erection of suitable buildings for an endowment of a university at the said place above named.

Sec. 4. That John Force, H. M. Waller, and R. C. Geer, be, and are hereby constituted a Board of commissioners to superintend the erection of buildings, at the place designated in the first section of this act, as the seat of government; and the said commissioners, or a majority of them, shall agree upon a plan of said buildings, and shall issue proposals, giving two months' notice thereof, and contract for the erection of said buildings without delay; and the said commissioners shall agree upon one of their number to be acting commissioner; and said acting commissioner shall give bond to the United States in the sum of twenty thousand dollars, to be approved by the Governor of this Territory, for the faithful performance of his duty; and said bond shall be filed in the office of the secretary of this Territory.

Sec. 5. It shall be the duty of said acting commissioner to superintend, in person, the rearing and finishing said buildings; and the said acting commissioner shall have power to call the said Board of commissioners together, for the purpose of transacting business on this subject; and the said commissioners shall receive such compensation as shall be hereafter allowed by law.

Sec. 6. The acting commissioner shall annually report to the

Legislative Assembly, a true account of all moneys received and paid out by him.

SEC. 7. If by death, resignation, or any other cause, there shall be a vacancy in said Board of commissioners, it shall be the duty of the Governor to appoint some person from the district where such vacancy occurred, to perform the duties of such disqualified commissioner: *Provided, however*, That such appointment shall not extend beyond the meeting of the next Legislative Assembly.

SEC. 8. *And be it further enacted*, That a Penitentiary of sufficient capacity to receive, secure, and employ one hundred convicts, to be confined in separate cells at night, shall be erected at the place designated in the second section of this act, for the confinement and employment of persons sentenced to imprisonment and hard labor in the Penitentiary in this Territory.

SEC. 9. That Daniel H. Lownsdale, Hugh D. O'Bryant, and Lucius B. Hastings, be, and are hereby constituted a Board of commissioners, to superintend the erection of a Penitentiary, at the place designated in the second section of this act, and shall be governed by, and have all the powers, and be subject to all the restrictions contained in sections four, five, six, and seven of this act, and receive such compensation as may hereafter be allowed by law.

SEC. 10. This act to take effect and be in force, from and after its passage.

Passed the House of Representatives, January 30th, 1851.
Passed the Council, February 1st, 1851.

PUBLIC PRINTING.

AN ACT, *to provide for the Public Printing, and distribution of the Laws and Journals.*

SEC.
1. Public printer to be elected annually by the Assembly, for one year after January previous to election. Bond to be given in forty days, or before entering on the duties of office. On failure to give bond, the secretary to employ other printers.
2. Prices of public printing fixed.

SEC.
3. The secretary to superintend, estimate, and pay for same, and to report to Assembly.
4. Distribution of laws—how made.
5. Secretary to compile the general laws. His compensation.
6. Act to take effect from its passage.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected annually, counting from the month of January, A. D. 1851, by the Legislative Assembly, on joint ballot, a territorial printer, who shall serve for one year from and after the January previous to his election; and such printer shall, within forty days after his election, or before entering upon the duties of his office, enter into bonds with sufficient surety, to be approved by the secretary, with condition for the prompt, and accurate, and workmanlike execution of the public printing, and the faithful performance of all the duties required of him by law: *Provided*, That in case the public printer shall fail to give bond within the term required by law, the secretary is hereby authorized to employ any other person to execute any portion of the work herein provided for, at rates not to exceed those herein provided.

SEC. 2. The prices to be paid to such printer are hereby established as follows: For composition, per thousand ems, two dollars and fifty cents; figure work, per thousand ems, three dollars; rule and figure work, per thousand ems, four dollars; press-work, per token, common form, two dollars and fifty cents; folding reports and bills, per thousand copies on each signature, one dollar; stitching reports and bills, per hundred copies, one dollar and fifty cents; paper for the same, six dollars per ream; and for binding in strong paper, or otherwise, a reasonable compensation shall be allowed, to be fixed by the secretary of the Territory.

SEC. 3. The secretary of the Territory shall superintend all the printing done for the Territory, and see that the same is well executed; and shall measure and estimate the same, and defray the expenses of the same, out of any money in his hands, appropriated by Congress to pay the expenses of the Legislature of this Territory; and shall annually report to the Legislature, on or before the third day of the session, the amount of work done, and the cost.

SEC. 4. The secretary shall annually cause five hundred copies of the laws of a general nature, one hundred copies of the local laws, one hundred copies of the journal of the House of Representatives, one hundred copies of the journal of the Council, to be printed and disposed of as follows: One copy of each to the members of the Legislative Assembly, their officers and clerks; one copy of each to the civil officers of this Territory, appointed by the United States; ten copies of each to be placed in the territorial library; one copy of each to be deposited with the probate clerk of each county, for the inspection of the public; the remaining portion to be distributed among the several counties, in proportion to their population, to be received by the probate clerk, and receipted for by him.

SEC. 5. It shall be the duty of said secretary to make a complete index of said laws and journals, with marginal notes to the volume of the general laws, and he shall receive for services under this act, the sum of one thousand dollars, to be paid out of any money appropriated by Congress to defray the expenses of the Legislature of this Territory.

SEC. 6. This act to take effect and be in force, from and after its passage.

Passed the House of Representatives, February 5th, 1851.
Passed the Council, February 6th, 1851.

REPRESENTATIVES.

AN ACT, *to increase the number of Representatives in the Legislative Assembly of the Territory of Oregon.* (208)

SEC.

1. Number of representatives to be added, &c. When and how elected.

SEC.

2. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That four members be added to the present number of Representatives in the Legislative Assembly of this Territory, one of whom shall be allotted and apportioned to the county of Umpqua; one to the county of Lane; one to the counties of Clark and Lewis, jointly; and one additional one to the county of Washington; and the one that is allotted to Clatsop, Lewis, and Clark counties, be, and is hereby allotted to the counties of Clatsop and Pacific, jointly, and the voters of the above-mentioned counties are hereby authorized to elect the representatives created and allotted by this act, in the same manner and at the same time as is provided for by law for the election of Representatives for the different counties in this Territory.

SEC. 2. This act to take effect, and be in force, from and after its passage.

Passed the Council, February 5th, 1851.
Passed the House of Representatives, February 5th, 1851.

REVENUE.

AN ACT, *to provide for assessing and collecting County and Territorial Revenue.* (209)

SEC.

1. Probate Court to levy tax—amount of levy. What property subject to taxation.
2. When and how levy made—poll tax may be levied.
3. Election of county assessor.
4. Certificate of election.
5. Vacancies—how filled.
6. Certificate of appointment.
7. Bond of assessor—oath of office, &c.
8. When assessment made—return of assessment roll.
9. Assessment of town lots.

SEC.

10. All property to be taxed at its true value in cash—what property exempt—proviso.
11. Assessor may require returns to be verified by oath—penalty for refusing.
12. Clerk to prepare blank forms. Compensation for the same—how made.
13. How property assessed, when omitted the previous year.
14. Compensation of assessor—account to be sworn to—how paid. Probate Court may deduct for failure or ne-

SEC.

glect of duty—when securities liable for such deduction.

15. Amount of territorial revenue. Duties of clerk, in calculating territorial and county tax.

16. Same subject.

17. Clerk to make two copies of the assessment roll within twenty days—how made—one to be delivered to sheriff. Directions to the sheriff how taxes collected.

18. Sheriff to be make monthly payments to the county treasurer—receipt therefor—effect of it.

19. Gross assessment of town lot owned by two or more persons—sheriff may receive proportionate payments—proviso

20. When sheriff may distrain for taxes, &c.

21. How and when town lots to be sold for taxes.

22. Sheriff to file verification of printer, as to notice of sale

23. Sheriff to sell lots in pursuance of notice, after filing evidence of publication of the same.

24. Sheriff to give purchaser certificate of purchase—effect of the same. Proviso as to minors, insane persons, and persons in confinement.

25. Town lots unsold, and taxes remaining unpaid thereon—taxes and charges to bear interest. Probate Court to examine delinquent list, correct all errors, examine returns of clerks, &c.

26. Taxes made a lien on town lots Proceeds of personal property sold for taxes—how applied—if any surplus, to be refunded.

27. Return of sheriff to the precept of the clerk, to sell lots, &c. Proceedings in case of false return.

28. Clerks to make copies of the delinquent list—how and when posted up.

29. Sheriffs may collect taxes after term of office expires.

30. Sheriff to assess property unassessed—return of the same when made, verified by oath—effect of neglecting such returns.

SEC.

31. Sheriff may remit tax—when—return of the same.

32. Remedy for persons injured by neglect of sheriff to enter credit for taxes paid.

33. When sheriff to make final settlement with court, and how.

34. Same subject.

35 Compensation of sheriff.

36. Sheriff failing to make settlement, how proceeded against—penalty therefor.

37. Sheriff failing to return precept and duplicate. Proceedings in such case—proviso.

38. Penalty for neglect of duty, under this act.

39. Bonds taken under this act—proceedings upon the same.

40. Penalty for officers refusing to pay over moneys—how enforced. Records of the Probate Court—evidence.

41. Pedlers to obtain license—penalty for neglect to obtain—how enforced.

42. Persons applying for license to file with the clerk the receipt of the treasurer.

43. Territorial levy, amount of. How, and when made.

44. Tax, territorial. When collected, to be paid into the county treasury, subject to the order of the territorial treasurer—receipts therefor.

45. Territorial auditor to charge sheriff with territorial tax.

46. Act not to be construed to relinquish to counties tax heretofore assessed. Proceedings against officers who refuse to pay over such tax.

47. Proceedings against clerk for neglecting or refusing to transmit copy of assessment rolls to territorial auditor.

48. Sheriff neglecting to pay over, &c., to the territorial treasurer. Proceedings in such case.

49. Officers under this act prohibited from purchasing warrant or drafts, &c., or paying the same in lieu of taxes.

50. Territorial tax not to be applied to the indebtedness of the provisional government.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That for the purpose of raising a revenue for county and territorial purposes, it shall be the duty of the Probate Court of each county in this Territory, each year, to levy a tax not to exceed the liability of the county, and in no case to exceed four mills on the dollar, on the property of all bodies corporate and politic; all capital employed in merchandising, all gold dust, all bills of exchange, all money lenders, all stocks in steamboats and other vessels; on all lands, town lots, and out lots; and on all personal property, with the exception of two hundred dollars' worth of household furniture to each householder; and excepting libraries, agricultural implements, tools of mechanics, the property of all literary institutions, together with public buildings, and other property belonging to the Territory; on each ferry kept by authority of law, not less than two, nor more than one hundred dollars, per annum; on each license for hawking wooden, brass, or any other kind of clocks, not less than one hundred, nor more than three hundred dollars; on each license to keep a grocery, not less than two hundred dollars; and no tavern keeper shall be permitted to retail spirituous liquors without a grocery license.

SEC. 2. That the Probate Court shall, annually, at their regular session in September, or so soon thereafter as the assessment roll is filed, levy a per centage on all real and personal property as aforesaid, sufficient, when added to the amount that will probably be received by the county, from other sources of revenue, to defray the current expenses of such county, and to liquidate its debts for the year. And the Probate Court may, annually, levy a poll tax, not to exceed one dollar, to be paid in money, or county orders, on all male citizens over the age of twenty-one, and under the age of fifty years.

SEC. 3. There shall be elected by the qualified electors of the several counties in this Territory, at the general election, a county assessor, and every such election shall be conducted in all things according to the laws regulating the election of other county officers.

SEC. 4. The clerk of the Probate Court shall deliver to the persons thus elected, immediately after their election, a certificate under the seal of the Probate Court.

SEC. 5. If no person be elected assessor, or if the person elected fail to take the oath, and enter into the bond required of assessors, on or before the first Monday of July, after his election, or after the time at which such assessor ought to have been elected; or if, at any time, there be a vacancy in the office of assessor, the Probate Court shall immediately appoint an assessor for that year, and in default thereof, the clerk of such court shall make such appointment in vacation.

SEC. 6. When an assessor shall be appointed by the court, or by the clerk of such court in vacation, the clerk shall deliver to such person so appointed, a certificate of his appointment, under the seal of the court.

SEC. 7. Such assessor shall, within ten days after receiving a certificate of his election or appointment, enter into bond, with sufficient security to the Territory, to the satisfaction of the court, or the clerk, if appointed in vacation, in a sum not less than five hundred dollars, conditioned for the faithful performance of the duties of his office, which bond shall be deposited in the office of the clerk of the Probate Court; and also take an oath or affirmation, to be administered by the clerk of the Probate Court, and endorsed on the back of his certificate of appointment, faithfully to discharge the duties required of him by law.

SEC. 8. That immediately after the election and qualification of each assessor, he shall commence assessing all the taxable property subject to taxation within his county, and shall deliver to the Probate Court, on, or before the first Monday of September thereafter, a full and complete assessment roll.

SEC. 9. The assessor shall give a full description of all town lots in his county, as laid down in such town plat, the number of lot or part thereof, and valuation of the same; and all town lots not given in by the owners, it shall be the duty of the assessor to return the same as non-resident land.

SEC. 10. All town lots and personal property shall be taxed according to its true value in cash, to be determined by the assessor, and it shall be the duty of each assessor to value all improvements on claimed lands unsold, as personal property, and charge the same to such claimants; and that all grain in stacks, and cribs of corn, or pork put up for family use, and all other necessaries of like nature, shall be exempt from taxation: *Provided*, That all keel and flat boats, and all wharf boats, shall be taxed according to their real value in cash.

SEC. 11. That any assessor may, at his discretion, swear any person to give a true account of his or her property in this Territory, according the best of his or her knowledge and belief; and should any person or persons, when so required, refuse to testify as aforesaid, such assessor shall ascertain the taxable property of such person or persons, from the best information to be derived from other sources, and the person or persons so refusing to testify, shall pay to such assessor the sum of ten dollars, for extra trouble, which sum may be recovered as other debts, by motion before any court having competent jurisdiction.

SEC. 12. That the clerk of the Probate Court of each county shall prepare blank forms for each assessor sufficient for his assessment, ruled in complete order, which roll shall be ready to be delivered to each assessor, on or before the fifteenth day of July in each year, for which the county shall pay for paper and ruling, ten dollars per quire. Said form shall be as follows:

Names of Persons.	Poll.	Personal Property.	Names of Towns.	Block.	Lot.	Value.	Total.

SEC. 13. That whenever any assessor shall discover during his assessment any town lot, or personal property of any kind, subject to taxation, that was omitted by his predecessor, he shall enter the same upon his roll, and the name of the person to whom it belongs, if known; and the said property shall be taxed and collected, as though it had been assessed the preceding year, and paid into the county treasury.

SEC. 14. The assessor shall be allowed, as a compensation for his services, the sum of five dollars per day for every day necessarily employed in the discharge of the duties of his office; a return of which he shall make to the Probate Court under oath; said compensation to be paid out of the county treasury of the proper county, as other moneys are paid; and if afterwards it should appear that any of the assessors have failed to make a complete and full assessment, the Probate Court may deduct from his per diem such amount as it may deem reasonable for such failure, and if such assessor have received his pay for such assessment, he and his security shall be liable on their bond for the amount of such deduction.

SEC. 15. That it shall be the duty of the clerk of the Probate Court, in the first place, to calculate and carry out the territorial tax on the total amount as returned by the assessors, which rate shall be the half of the mill on the dollar; and it shall be the duty of said Probate Court, at its regular session in September, as before mentioned, to fix the per centage for county revenue, and such per centage as the court may fix upon shall be recorded, which shall govern said clerk in making out the calculations for county revenue for county purposes.

SEC. 16. That immediately after the return, acceptance, and filing of the assessment rolls, the clerk shall calculate and carry out the amount of taxes opposite to the specified property, lots, or lands, or any other property charged with taxes; and shall, within twenty days after the filing of the same, make out and deliver a certified statement of the amount, as exhibited by said assessment rolls to the treasurer of the county.

SEC. 17. That it shall be the duty of the probate clerk, within twenty days after filing the assessment rolls, to make out two copies of the same, with the names of the owners of the property therein assessed, arranged in alphabetical order, under the seal of the Probate Court, in the name of the Territory, directed to the sheriff of said county, commanding him to collect the taxes charged in said duplicate, by demanding payment of the persons therein charged, at their most usual place of residence, or in any other place where they may be found, on or before the first Monday in October next, ensuing, and on receiving full payment of the amount due from any person, he shall give a receipt in full for the amount paid, in words at full length, and for what year; and further, shall specify the number of lots so charged, and after once demanding payment, as aforesaid, he may, at his discretion, advertise and appoint times when he will meet each person in their respective townships, or precincts, to receive taxes.

SEC. 18. As fast as any sheriff shall collect any moneys due the county, he shall pay the same to the county treasurer monthly, and take his receipt therefor, which receipt shall be a sufficient voucher for the Probate Court, to cancel the amount of said assessment roll standing charged against the sheriff in the books of the Probate Court.

SEC. 19. That any sheriff, in case of gross assessment of taxes upon any lot, upon application of any claimant or owner of any part thereof, either divided or undivided, to pay such part as he may be entitled to pay, such sheriff shall receive the same: *Provided*, The owner shall specify by a map or memorandum of the survey, and the balance of such tax and interest shall be a lien on the remainder of such land.

SEC. 20. If the taxes are not paid to the sheriff on demand, he may proceed to collect, by distress and sale of the goods and chattels of the person or persons so charged, by giving ten days' notice of such sale, the time and place, and what property to be sold: such notices shall be set up in four of the most public places in the county.

SEC. 21. If no goods and chattels can be found, out of which to make the taxes charged on town lots, the sheriff shall give notice, in some weekly newspaper published in his county, or, if no such paper be there published, then in some county nearest thereto; also, by putting up four written notices in the most public places in the county, one of which shall be on the Court House door; and it shall particularly set forth each town lot intended to be sold, at least four weeks previous to the day of sale, which shall take place annually on the third Monday in February, notifying all whom it may concern that he will, on the third Monday in February next ensuing the date of such notice, commence selling at the Court House door, all and singular the town lots in said county, on which the taxes due for the year or years, are not paid by said day; and that such sale will continue from day to day, between the hours of nine o'clock in the forenoon, and four o'clock in the afternoon of each day, until all are offered for sale.

SEC. 22. The sheriff shall file with the clerk of the Probate Court the verification of the printer, that the advertisement above described, has been published for the length of time required by law in said newspaper.

SEC. 23. That after he has filed evidence of the publication of the notice required in the preceding section, the sheriff shall proceed, in pursuance thereof, on said third Monday in February, between the hours of nine and four o'clock of said day, to expose to sale each and every town lot on which the taxes are not paid; by the description and number of which they are designated, on the duplicate for the taxes and interest due thereon, and the cost for advertising and selling the same, or so much thereof as will sell for the amount due, and chargeable thereon, to the highest bidder, for ready cash: such sheriff shall continue from day to day, between said hours, to expose the said lots to sale, until all shall be duly offered.

SEC. 24. That when any lot of land, or part thereof, shall be sold for the non-payment of taxes and costs, the sheriff shall execute to the purchaser a certificate of the purchase, in the name of the Territory of Oregon, of the lot of land so sold, as aforesaid, which certificate shall vest in the person to whom it is given, all the right and title of the lawful claimant of the same. No sale of lots shall be valid under this section, if the tax for which the same is sold, shall have been paid prior to such sale; and the sheriff's receipt shall be evidence of that fact: *Provided always*, That when the lot of minors, insane persons, or persons in confinement, and *feme sole*, be sold, the same shall be redeemable within one year after such disability shall have been removed.

SEC. 25. That all town lots which shall not be sold as above provided, and the taxes charged thereon still remain unpaid, such taxes and charges shall bear interest at the rate of six per centum per annum, until paid, and the Probate Court before the duplicate of the succeeding year is made out, shall examine the delinquent list returned by the sheriff, and strike out from it all lots on which the taxes had been paid, and correct all manner of errors which may exist, and see that the clerks make due return of such corrected list of former years, which they shall annex to the new duplicate next after its correction; and if any remain unpaid, the same shall be collected by the sheriff of the current year, as hereinbefore directed.

SEC. 26. That taxes are hereby made a lien on town lots upon which they may be due, in whosoever hands such lots may come, and when any goods and chattels are sold to satisfy the payment of any tax, the sheriff shall apply it to that purpose, and should there be any overplus, he shall refund the same to the owner.

SEC. 27. The sheriff in his return to the precept mentioned, shall state fully and distinctly, the payment made, by way of credit, to the property charged on the transcript of the assessment rolls, as aforesaid; the payments enforced by distress and sale of goods and chattels, and in like manner, the sale of lots or part thereof; and the person to whom, and the sum for which the same were sold; also the taxes remaining unpaid; designating particularly the lots remaining unsold, the names of persons delinquent in the payment of other taxes, and tax or property with which he is charged, and the cause of failure to enforce payment as commanded in the precept; and such other matters as are provided by this act to be by him done, and the truth of such return shall be verified by affidavit of the sheriff, to be taken before the clerk of the Probate Court; and if any individual shall be injured, or sustain any damage by a false return of any sheriff, made to any precept under the provisions of this act, or other illegal and fraudulent act of such sheriff, such individual or individuals, upon suit to be brought against such sheriff, and his securities upon their bond for his or their use, shall recover treble damages, and full costs and charges.

SEC. 28. That it shall be the duty of the probate clerks of the several counties, to make out four copies of the list of delinquents, as returned by the sheriffs of their several counties; one of which they shall put up in some conspicuous place in their office, and shall keep the same up for twelve months; and shall cause the other three to be posted up in the most public places in the county, within ten days after receiving said return: *Provided, however*, It shall be lawful for any sheriff to proceed by distress and sale of goods and chattels, to collect any taxes returned delinquent, within twenty days after making such return.

SEC. 29. That sheriffs shall have power to proceed in the collection of taxes due them for two years from the time at which they were bound to pay over to the county in each year, in the same manner as they would have done during their term of office; but this provision shall not be so construed as to authorize any sheriff to collect taxes by him returned delinquent after receiving credit therefor.

SEC. 30. That each sheriff is required to assess a county and territorial tax on all town lots and personal property that may not have been assessed; and, at the same time he makes return of the precept and list of delinquents, as required by this act, shall make and verify, by affidavit, a list of property by him assessed, and the taxes collected thereon; and no allowance shall be made to any sheriff on his delinquent list, by the Probate Court, until he shall have complied with the foregoing requisition; and it shall be the duty of the clerk to publish a list of the unassessed property that has been assessed, and the taxes collected thereon by said sheriff, in the same manner, and at the same time that he publishes the delinquent list.

SEC. 31. That when any sheriff discovers that any town lot has been assessed more than once for the same year, he shall credit the tax only really due, and make return of the balance, as illegally assessed; and in all cases where too much personal property has been, through mistake, charged by the assessor, the sheriff may remit the excess of the tax, and report the same, with the illegal assessment, the name of the person and property illegally assessed; and the same shall be verified by affidavit, and filed with the clerk, before it shall have any effect.

SEC. 32. That any person injured by the neglect of any deceased sheriff to enter credits for taxes paid on the transcript aforesaid, shall have redress by action on such sheriff's bond, for the damages thereby sustained; and if any person charged with taxes on the duplicate of the deceased sheriff, and shall have no evidence of payment of said tax, he shall produce the sheriff's receipt of such prior sheriff; and his successors shall not be charged therewith, but shall take up such receipt, and give his own in lieu thereof, and return the same with said receipt, and the amount shall be recoverable as before provided.

SEC. 33. The sheriffs of the several counties in this Territory are required, and it is hereby made their duty, to pay to the county treasurer of their counties the whole amount of taxes charged against them in said duplicate, on or before the first Monday in January in each year; and if there be any deficiency in the amount thereof, they shall account for the same by producing to the Probate Court a certified statement, to be made by the clerk, attested by his signature and official seal, of the amount of the delinquencies in the payment of taxes, specifying the name of the person and property, or tax for which he is delinquent, as appears from such sheriff's return to the precept.

SEC. 34. That it is made the further duty of the clerk to make out such statement and certificate, and calculate the amount thereof; and if the amount of such certified statement of delinquencies, and the treasurer's receipt for the payment aforesaid will balance the charges on the books of the Probate Court, they shall give him a receipt for the amount of such taxes.

SEC. 35. Each sheriff shall be entitled to the following fees for his services: seven per centum on all taxes by him collected, except by distress; then, three per centum in addition; and on town lots fifty cents, on each certificate.

SEC. 36. If any sheriff shall fail to make settlement of the taxes assessed in his county at the time required by this act, it shall be the duty of the Probate Court forthwith to charge in the account against such sheriff, ten per centum damage on the amount of the balance due from such sheriff, on account of such taxes, for such delinquency; and unless the said debts and damages, and the interest thereon, be paid to the treasurer of the county, the Probate Court shall cause suit to be commenced against such sheriff and his securities on their bond, for the debt and damages due as aforesaid; and the said amount shall bear interest from the day on which payment was to have been made, at the rate of twenty per centum per annum, until paid; and upon the trial of any such suit, the stated account of the sheriff against whom the suit is brought, certified by the clerk of the Probate Court as truly transcribed from the account current against such sheriff on the books of the Probate Court, authenticated by the seal of the court, shall be conclusive evidence of the amount against such sheriff and securities; nor shall such sheriff and his securities be permitted to set off, or allege, in payment of such demand, any payment or claim of credit, unless the same has been first presented to the Probate Court, and been allowed or rejected by it, or the same could not, by using due diligence, have been presented to said court for their determination thereon, to be had before trial of such suit.

SEC. 37. If any sheriff shall fail to return the precept and duplicate as hereinbefore directed, or shall make a false return thereto, the judgment upon the determination of the suit which may be brought by the Probate Court against such sheriff and his securities, shall be for the full amount of the taxes for the county and territorial revenue, as contained in said duplicate, together with damages and costs: *Provided*, That the Probate Court may extend the time to a day certain, to be fixed, that said sheriff may make return, without fail, conforming in all respects with the provisions of this act. It shall be the duty of the prosecuting attorney in the prosecution of this act, when requested, to give advice and counsel concerning the revenue.

SEC. 38. That if any officer shall neglect or refuse to perform the duties imposed upon him by this act, he and his securities shall forfeit and pay to the county not less than one hundred dollars for each offence, besides all damages which may be sustained by the county or any individual, in consequence of such violation of his duty; the said penalties to be adjudged, within the limitation aforesaid, by the court before whom the adjudication shall be had; and to be recovered, with cost of suit, in an action to be brought upon the official bond of such officer.

SEC. 39. That all bonds directed to be taken by this act shall be made payable to the Probate Court of the proper county; and all suits brought thereon shall be prosecuted in the corporate name of the Probate Court, on the relation of such person, or persons; and their several rights may be presented in the same suit on such bond, and one judgment entered thereon, which shall be no bar to other rights; but the Probate Court, or any other person having right thereto, may have the defendants to such judgment again summoned by *scire facias*, to show cause why execution should not be awarded on such judgment for the debt and damages supposed to be due, owing, or belonging to, the party complaining, as often as such right may accrue.

SEC. 40. That any officer withholding the payment of any moneys belonging to the county or the Territory, after the same shall be demanded or become due, shall be liable to pay five per centum in damages, and twenty per centum interest per annum, from the date of such defalcation, to be recovered of such officer and his securities, or either of them, by action, as in other cases; and the accounts in favor of the county in all cases of the trial, against all and every person, or persons, charged on the books of the Probate Court, and certified to be true by their clerk, as above prescribed in cases of sheriffs, and authenticated by their seal, shall be evidence in all cases of debtors, of the charges therein stated, to put the defendant upon his defence to the demand.

SEC. 41. That no peddler shall be permitted hereafter to vend, sell, or retail at private sale, any goods, wares, and merchandise, without first having obtained a license for that purpose from the Probate Court of the county in which said peddler may intend to offer said goods for sale, and paying such sum as the Probate Court shall assess, not less than ten, nor more than one hundred dollars per annum, or at the same rate for a shorter period; and if any person, or persons, shall peddle any goods, wares, or merchandise, within any county in this Territory, without first having obtained a license for this purpose, any such person, or persons, so offending, shall forfeit and pay any sum not exceeding two hundred dollars, nor less than fifty dollars, to be recovered by action of debt, in the name of the Probate Court of the proper county, for the use of said county, before any Justice of the Peace, or any court of record having jurisdiction thereof.

SEC. 42. That no person or persons applying for a license or permit, shall be entitled to the same, until he or they shall file with the clerk of the Probate Court, a receipt from the county treasurer, for the amount ordered to be paid by such applicant or applicants, agreeably to the provisions of this act; and such receipt shall be charged in the account against said treasurer on the books of said court.

SEC. 43. That it shall be the duty of the Probate Court of each and every organized county, when they levy the county tax, to levy, in addition thereto, a tax of one half mill per cent. on all taxable property within this Territory, for territorial purposes, which shall be collected in the same manner, and at the same time that the county tax is collected, and by the same officer.

SEC. 44. That when said tax is collected, it is hereby made the duty of the collectors of said tax, to pay the same into the county treasury of the county; there to remain, subject to the order of the territorial treasurer; and it is hereby made the duty of the said sheriff, to take duplicate receipts for the same, one of which they shall transmit by mail, or other safe conveyance, to the territorial treasurer, and the other they shall keep as a voucher for their own safety.

SEC. 45. That it shall be the duty of the auditor of public accounts, so soon as he shall have received a copy of the assessment roll from the clerk of the Probate Court of any county in this Territory, to open an account with the sheriff of such county, in which he shall charge such sheriff with the amount of territorial tax which shall appear, from said copy of the assessment roll, to have been assessed in such county.

SEC. 46. That nothing in this act shall be so construed as to relinquish to any of the counties in this Territory, any portion of the tax heretofore assessed in said counties, for county or territorial purposes, by any law or laws heretofore in force on that subject; and if any sheriff, county treasurer, or other officer in this Territory, who shall have heretofore received any part of the territorial revenue, and shall have neglected or failed to account for, or pay over the same, according to the laws heretofore passed, it shall be the duty of the auditor and prosecuting attorney of the proper district, to proceed against such officer and his securities, in like manner as provided in section forty-first, for proceeding against delinquent sheriffs and their securities.

SEC. 47. That whenever the clerk of the Probate Court of any county in this Territory, shall neglect or refuse to transmit to the auditor of public accounts, a copy of the assessment roll, as directed by this act, it shall be the duty of the auditor, before the next term of the District Court to be holden in and for such county, to give notice to the prosecuting attorney of the judicial district in which such county may be situated, of such neglect or refusal; and it shall be the duty of such prosecuting attorney to apply to the said District Court, on the first day of the next term thereof, for a writ of *mandamus*, under the seal of said court, directing such clerk forthwith to transmit such copy to the auditor, as aforesaid, or show cause by the fourth day of the same term of such court, why he has failed to do so, according to the provisions of this act: and if it shall appear that such failure has been occasioned by carelessness, or wilful negligence, he shall pay the costs of such sheriff, together with a fee of five dollars for the prosecuting attorney.

SEC. 48. If the sheriff of any county in this Territory, shall neglect or refuse to account for, and pay over to the territorial treasurer, on or before the first day of February in each year, any or all of the taxes with which he shall stand charged by the auditor; it shall be the duty of the auditor forthwith to give notice thereof to the prosecuting attorney of the district, in which such county may be situated; and it shall be the duty of such prosecuting attorney to commence suit immediately against such sheriff and his securities upon his official bond, and the certificate of the territorial treasurer, countersigned by the auditor, shall be sufficient evidence to put such sheriff and his securities upon the proof of such settlement and payment; and whenever judgment shall be rendered against such sheriff and his securities, by virtue of the provisions of this section, the damages assessed shall be for the amount found due, and unaccounted for by such sheriff, together with twenty per cent. interest thereon, from the time such payment should have been made, until such judgment shall be satisfied; and the said prosecuting attorney shall be entitled to ten per cent. on the amount of such damages and interest, to be paid out of the proceeds thereof, as a compensation for his services: *Provided*, That in all cases, when persons against whom territorial taxes have been assessed, shall have become insolvent, or shall have removed out of the county before the said taxes could, by due diligence, have been collected from them, it shall be the duty of the sheriff to make out a list of such delinquents, together with the amount of territorial taxes assessed to each, which shall be verified by the affidavit of such sheriff, and filed with the auditor, whose duty it shall be to credit such sheriff by the amount of such delinquent list.

SEC. 49. That no sheriff, or other collector, county treasurer, or other officer authorized to collect or receive any part of the territorial revenue, by virtue of this act, or any act heretofore passed for the collection and receiving of the territorial revenue, shall hereafter be allowed to purchase any warrant issued by the auditor, or any draft heretofore issued by the territorial treasurer, with a view of paying the same into the territorial treasury, in lieu of money collected or received on account of the Territory; and it is hereby made the duty of the territorial treasurer to refuse to receive from any officer authorized to collect or receive any part of the territorial revenue, any warrant, draft, or evidence of debt against the Territory, hereafter purchased by such officer, and offered by him in payment to the territorial treasurer, in lieu of money collected or received on account of the Territory.

SEC. 50. No part of the territorial revenue collected in pursuance of this act, shall be applied to the existing indebtedness of the late provisional government; nor shall any territorial order, scrip, or warrant of the provisional government, be received in payment of territorial tax until otherwise provided for by law.

Passed, September 29th, 1849.

AN ACT, *amendatory to an act entitled "An Act to provide for assessing and collecting county and territorial revenue," passed, September 29th,* 1849.

SEC.
1. What repealed. What property taxable.
2. What repealed. Form of assessment roll.
3. Number of section in the forty-sixth section repealed.

SEC.
4. Board of county commissioners to correct errors in assessors' returns.
5. What per cent. levied for school purposes for the year 1851.
6. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That so much of the act to provide for assessing and collecting county and territorial revenue, passed September 29th, 1849, as is contained in section first of said act, after the word "merchandising," in the sixth line, be, and the same is hereby repealed, and the following inserted, viz.: "All bills of exchange; all stock in steamboats and other vessels; on all moneys at interest; on all land and town lots; on all mills and other machinery, and on all horses, mules, jacks, and jennies; on all cattle, sheep, and hogs; on all clocks, watches, and pleasure carriages; on all household furniture over the value of three hundred dollars to each householder; on each license for hawking wooden, brass, or any other kind of clocks, not less than one hundred, nor more than three hundred dollars on each license; to keep a grocery, not less than two hundred dollars; and no tavern keeper shall be permitted to retail spirituous liquors without a grocery license."

SEC. 2. And that so much as is contained in the twelfth section of the same act, after the word "quire," in the fifth line, be, and the same is hereby repealed, and the following inserted: "Said form shall contain a separate form for each species of property, and one separate for the valuation of the same, noting the kind and number of stock or article to be taxed, as near as may be ascertained by the assessor; and one column in the right of said form, to contain the sum total of each and every individual assessment."

SEC. 3. And that the words "forty-first," contained in the tenth line of the forty-sixth section of said act, be, and the same are hereby repealed, and the words "*thirty-seven*" be inserted.

SEC. 4. That at the October session of the Board of county commissioners, any person may appear before said Board and show, upon their oath and other testimony, that he has been wrongfully assessed by the assessor by mistake or otherwise, and if the Board are satisfied of such wrong assessment, they are hereby empowered to make such alteration as they may deem equitable and just.

SEC. 5. That for school purposes, there shall be one mill on the dollar only, assessed and collected for the year 1851.

SEC. 6. This act to take effect, and be in force, from and after its passage.

Passed the House of Representatives, February 6th, 1851.
Passed the Council, February 7th, 1851.

ROADS AND HIGHWAYS.

AN ACT, *on Roads and Highways.*

SEC.
1. Roads to be opened and kept in repair according to this act.
2. Application for laying out or altering roads to be made to county commissioners.
3. Notice of application to be given by advertisement.
4. Duty of viewers.
5. Review allowed on application of twelve householders.
6. Damages to landholders—how assessed, and how paid.
7. Vacation of useless road upon application of householders, and sustained by viewers.
8. Boundaries of a road uncertain, to be reviewed and located.
9. Alteration of road—manner of applying—view—report, &c.
10. Penalty for refusal or neglect of viewers.
11. Compensation.
12. Location of road along the county line—report of reviewers, &c.
13. Report sustained by commissioners—road to be opened.
14. Manner of opening road.
15. Applicants for opening, altering, or relocating roads, to give bond for expenses.
16. Record of plat in two counties—when required.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Oregon*, That all county and territorial roads which have been or may hereafter be laid out and established agreeably to law in this Territory, shall be opened and kept in repair in the manner herein provided, and all county roads shall hereafter be laid out and established agreeably to the provisions of this act; and all county roads shall be sixty feet wide, unless the commissioners of the county, upon petition, should determine on a less number of feet in point of width on any road so petitioned for.

SEC. 2. That all applications for laying out or altering any county road, or for the alteration of any territorial road, shall be, by petition to the Board of commissioners of the proper county, signed by at least twelve householders of the county living in the vicinity where said road is to be laid out or altered, and said petition shall specify the place of beginning, the intermediate points, if any, and of termination of said road.

SEC. 3. That previous to any petition being presented for a county road, or for the alteration of any county or territorial road, notice thereof shall be given by advertisement set up at the place of holding county commissioners' courts, and three public places in each township through which any part of such road is designed to be laid out or altered, at least thirty days previous to the meeting of the Board of county commissioners, at which the petition shall be presented; and on the petition being presented and the commissioners satisfied that such notice has been given as aforesaid, they shall appoint three disinterested householders of the county as viewers of said road, and a skilful surveyor to survey the same, and shall issue an order directing said viewers and surveyors to proceed, on a day named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey, lay out or alter said road.

SEC. 4. That it shall be the duty of viewers and surveyors, appointed as aforesaid, after receiving at least six days' previous notice by one of the petitioners, to meet at the time and place specified in the order of the commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation, faithfully to discharge the duties of their appointments respectively, shall take to their assistance two suitable persons as chain carriers, and one marker, and proceed to view, survey, and lay out, or alter said road, as prayed for in the petition, or as near the same as in their opinion a good road can be made at reasonable expense, taking into consideration the utility, convenience, and inconvenience and expense, which will result to individuals as well as to the public, if such road shall be established and opened or altered; and the surveyor shall survey such road, under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the course and distance, and at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road or survey, to be marked on a tree or monument erected for that pupose; he shall also make out and deliver to one of the viewers, without delay, a correct certificate return of the survey of said road, and a plat of the same, and the viewers shall make and sign a report in writing, stating their opinion in favor or against the establishing or alteration of such road, and set forth the reasons of the same; which report, together with the plat and survey of said road or alteration, shall be delivered to the county commissioners' clerk by one of the viewers, on or before the first day of the session of the county commissioners' court then next ensuing; and it shall be the duty of the commissioners on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no legal application shall be made to them for a review of said road, or alteration or petition for damages, between the first day of their session, at which the report and survey are made, and the second day of their next stated session, they shall cause said report, survey and plat, to be recorded; and from thenceforth, said road shall be considered a public highway, and the commissioners shall issue their order directing said road to be opened. But if the report of the viewers be against such proposed road or alteration, then no further proceeding shall be had thereon, and the obligor or obligors in the bond securing the payment of costs and expenses, shall be liable for the full amount of such costs and expenses: *Provided*, That in all cases, when any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor, or by one of the viewers or reviewers, who have previously been sworn or affirmed themselves.

Sec. 5. That after the viewers of any county or territorial road, shall have made return in favor of the same agreeably to the preceding section, and before said return shall be recorded, and the record established, it shall be lawful for any householder of the county to apply to the commissioners for a review of said road, by petition signed by at least twelve householders residing in that part of the county through which said road is proposed to be established; and the commissioners shall, on such petition being presented, and they satisfied it is just and reasonable, appoint five disinterested qualified voters of the county, to view said road, and issue their order to said viewers, directing them to meet at a time specified in such order, or within five days thereafter; and said viewers shall meet, after having received six days' previous notice by one of the petitioners, and after taking the oath or affirmation required by the preceding section, shall proceed to examine the route surveyed for said road, by the former commissioners, stating their opinion in favor or against the establishment of said road, and their reasons for the same; and if the report of the viewers be in favor of said road, the same shall be established, recorded and opened, agreeably to the provisions of this act, and the person or persons bound for the same, shall pay into the county treasury the amount of the costs of such review; but if the report be against the establishment of such road, no further proceeding shall be had thereon before the commissioners, and the persons executing the first bond shall pay into the county treasury the amount of costs and expenses of the first view and survey, and review of said road.

Sec. 6. That if any person, or persons, through whose lands any territorial or county road may be laid out, shall feel injured thereby, such person or persons may make complaint thereof to the Board of county commissioners, at any time between the session of the commissioners at which the report of said road is made, and the second day of their next stated session; and the commissioners shall appoint three disinterested householders of the county, whose duty it shall be, after having been duly sworn, or affirmed, to discharge their duty faithfully and impartially, to proceed and view said road the whole distance the same may have been established through the premises of the complainant, and assess and determine how much less valuable the land or premises of the complainant has been, or will be, rendered by the opening of said road; and they shall report the same in writing to the commissioners, at their next meeting thereafter; and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable, and that said road will, in their opinion, be of sufficient importance to the public to cause the damages to be paid by the county, they shall order the same to be paid to the petitioner from the county treasury; but if, in their opinion, the said road is not of sufficient importance to the public to cause the same to be paid by the county, they may refuse to establish the same a public highway, unless the damages and expenses are paid by the petitioners.

SEC. 7. That when any county road shall be considered useless, and twelve householders residing in that part of the county where such road is established, may make application by petition to the Board of commissioners of the county to vacate the same, setting forth in said petition the reasons why said road ought to be vacated, which petition shall be presented and publicly read at a regular session of the Board of commissioners; and no other proceedings shall be had thereon until the next stated session of said Board of commissioners, when it shall be again read as aforesaid, and if no objection be made, the commissioners may, on the last day of that session, declare said road vacated, or any part thereof, which they may deem necessary to keep open, for public convenience; but if objection be made in writing, signed by at least twelve householders residing in the neighborhood of the road proposed to be vacated, the commissioners shall appoint three disinterested persons to view said road, who shall take the same oath or affirmation as is required by the fourth section of this act, and proceed to view the road aforesaid, and make a report of their opinion thereon, and their reasons for the same, to the Board of commissioners; and if said viewers shall report in favor of vacating said road, or any part thereof, the commissioners may, if they shall deem it just and reasonable, declare said road vacated, agreeably to the report of the viewers; but in case said viewers shall report against vacating said road, then and in that case no further proceeding shall be had thereon: *Provided,* That previous to any petition being presented under the provisions of this section, the same notice shall be given as is required by the third section of this act.

* * *

SEC. 8. That when the place of beginning, or true course of territorial or county roads shall be uncertain, by reason of the removal of any monument or marked tree by which said road was designated, or from any other cause, the Board of commissioners of the proper county may appoint three disinterested persons, citizens of the county, to review and straighten said road, if they shall deem it necessary; and the reviewers shall cause said road to be correctly marked throughout, as in case of new roads, and a correct survey shall be made of the same; and shall make return of said survey and plat of said road to the Board of commissioners, who shall cause the same to be recorded as in other cases; and from thenceforth said road, surveyed as aforesaid, shall be considered a public highway.

SEC. 9. That if any person or persons through whose lands any territorial or county road is or may be established, shall be desirous of turning said road through any other part of his or her land, such person or persons may, by petition, agreeably to the second and third sections of this act, apply to the commissioners of the county while in session, to permit him or them to turn any road through any other part, or off of his, her, or their land, on as good ground, without increasing the distance to the injury of the public; and on the receipt of such petition, the Board of commissioners shall appoint a surveyor, and three disinterested householders of the county, as viewers, who, or any two of them, shall proceed to view the ground over which the said road is proposed to be turned, and ascertain the distance which said road will be increased by such proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility or inutility of making said alteration; and if said viewers shall report to the Board of commissioners that the prayer or prayers of the petitioners is reasonable, and that the alteration will not place the road on worse ground, or increase the distance to the injury of the public, they shall, upon receiving satisfactory evidence that the proposed new road has been opened, a legal width, and, in all respects made equal to the old road for the convenience of travellers, the commissioners aforesaid may declare said new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced by the new, and the person or persons desiring the alteration aforesaid, shall pay all the costs of the view, survey, and return of said alteration.

SEC. 10. That if any person who shall be appointed by the Board of commissioners as viewers, reviewers, or surveyor of any road, shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding ten dollars, to be recovered by action of debt by any person suing for the same, before any Justice of the Peace having jurisdiction of the same, and shall be paid over, without delay, to the county treasury, by the Justice of the Peace or constable collecting the same, taking his receipt therefor; and the Board of commissioners shall cause all fines which shall be paid into the county treasury under the provisions of this act, to be expended on roads and bridges within the county.

SEC. 11. That persons required to render services under this act, shall receive compensation for each day they shall be necessarily employed, as follows, to wit: viewers and reviewers, three dollars each; chain carriers and markers, two dollars each; and surveyors four dollars each; to be charged as costs and expenses, and paid out of the county treasury, on the order of the Board of commissioners of the proper county.

SEC. 12. That when it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the Board of commissioners of their respective counties for a view of such road in the manner pointed out in the preceding section of this act, and it shall be the duty of such Board of commissioners for each of the counties interested, to appoint three discreet citizens, as viewers, who, or a majority, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor; and the viewers and surveyor appointed, as aforesaid, shall make their report in writing, for or against such road, to the Board of commissioners of the counties concerned, and the said commissioners, upon receiving such report, shall, in all respects, be governed by the provisions of this act.

SEC. 13. That if on receiving such report, the commissioners of all the counties interested shall be of opinion that such road, if opened, would be of public utility, they shall order the same to be opened in the manner pointed out by this act.

SEC. 14. That when any road is located under the provisions of the twelfth and thirteenth sections of this act, it shall be the duty of the Board of commissioners of the county, or trustees of townships adjoining such road, to select one from their number, whose duty it shall be to meet at some convenient place near the line of the same, the time and place to be appointed by the commissioners, or trustees of the oldest county or township interested, previous to the time appointed by law, for apportioning labor to their respective road districts; and shall assign a sufficient number of persons, if practicable, to open such road and keep the same in repair, dividing the road in such manner, that the persons so assigned, may work under the orders of the supervisors; and persons so assigned shall be governed by the provisions of the act, entitled, "An Act defining the duties of supervisors of roads and highways."

SEC. 15. That on application made under the provisions of this act, the Board of commissioners of the proper counties shall, before granting any order thereon, require of the person or persons making such application, a bond, with one or more sufficient sureties, made payable to the county treasurer, and approved by the Board of commissioners of the county, for the use of the county.

SEC. 16. That no change shall be made in the direction of a territorial road, where it crosses the line between two counties, unless by mutual agreement in the report of the viewers appointed by the Board of commissioners in the counties interested, in which last case, the plat and survey of the variation from the original road shall be recorded in both counties.

Passed the House of Representatives, February 7th, 1851.
Passed the Council, February 7th, 1851.

SCIRE FACIAS.

AN ACT, *concerning the writ of Scire Facias.*

SEC.
1. *Scire facias* to revive judgment after three years.
2. After a year and day affidavit required.
3. Certain cases in which writ may issue. When limited to a year, &c.
4. As to successors, trustees, guardians, &c.
5. How issued, tested, and returned, &c
6. Returned "not found." Effect thereof. Issued to another county.
7. *Scire facias* may be in place of a declaration.

SEC.
8. Executors, &c., may make *profert* of letters in *scire facias*.
9. Stay of execution and appraisement of property, in cases of forfeited recognizances.
10. Proceedings in case of forfeited recognizances before a Justice of the Peace.
11. Proceedings thereon in District Court.
12. *Scire facias* to charge lands. Defendant may plead in abatement that he has no lands, &c.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That it shall not be necessary to revive a judgment by *scire facias*, where an execution shall not have been issued upon such judgment, until the expiration of three years from, and after the rendition of such judgment.

SEC. 2. But if no execution have been issued for a year and a day, an execution shall not issue until the plaintiff, his agent, or attorney, shall have filed with the officer issuing execution, an affidavit that such judgment has not been paid or satisfied, and that there is not, as he verily believes, any good reason why such execution should not be issued.

SEC. 3. A writ of *scire facias* may issue in the cases not otherwise provided for by law, to revive a judgment against the personal representatives of any deceased defendant, or in favor of the personal representatives of a deceased plaintiff, or when the situation of either party is changed by marriage; or to continue a suit by, or against the representatives of either party, who may have died in the progress of any suit; but writs of *scire facias* against the personal representatives of any party to an action, shall be issued within one year after the cause for issuing the same shall arise.

SEC. 4. Such writ may also be issued, and the suit revived for or against the successor of any guardian, trustee, or public officer, in whose name or on whose relation any suit may have been pending, in like manner as provided in the last section; and shall be subject to all the provisions of the law respecting the revival of suits for or against the representatives of a deceased party.

SEC. 5. Writs of *scire facias* may be issued, tested, and returned in like manner as a writ of summons; and may also be served as a summons, without the aid of two freeholders, whether the defendant be or be not found within the bailiwick of the officer to whom the writ may be directed.

SEC. 6. If such writ be returned "Not found," a second writ may issue; and if such second writ be also returned "Not found," the same proceedings may be had on such *scire facias* as if it had been returned "Served," or such writ may be issued to any county in the Territory; but in such case, no further proceedings shall be had thereon, unless such writ be returned "Served on the defendant."

SEC. 7. No declaration shall be required to be filed to the said *scire facias*, and the *scire facias* may be amended, pleaded to, and proceeded on as in case of a declaration.

SEC. 8. When executors or administrators are plaintiffs in any writ of *scire facias*, they may make *profert* of their letters testamentary or of administration in the *scire facias*, in the same manner as now practised in the declaration; and the defendant shall plead to such writ as to a declaration.

SEC. 9. Where judgment or execution is rendered on any *scire facias* on a forfeited recognizance in a criminal case, the defendant shall be entitled, from the time of such rendition, to all the provisions of the laws of this Territory, allowing a stay of execution on the entering of replevin bail; and also requiring the property of execution-defendants to be appraised before the sale thereof under execution.

SEC. 10. Where a recognizance is taken for the appearance of any person to answer a criminal charge before a Justice of the Peace, and such recognizance shall be forfeited, such Justice of the Peace shall enter judgment of forfeiture thereon, and immediately file a transcript of such recognizance and judgment in the clerk's office of the District Court of his county.

SEC. 11. Such clerk shall forthwith enter such transcript on the order-book, and a *scire facias* shall be issued, and judgment for execution be awarded thereon, as if such forfeiture had been taken in such District Court.

SEC. 12. It shall be lawful for any defendant to any *scire facias* to charge real estate, to plead in abatement of the *scire facias* that said defendant had no real estate in said county at the time of issuing said *scire facias*.

Passed the House of Representatives, December 20th, 1850.
Passed the Council, January 2d, 1851.

(212)

SETTLERS ON PUBLIC LANDS.

AN ACT, *to prevent injuries to the possession of Settlers on Public Lands.*

SEC.

1. Land law of the late Provisional Government declared to be in force—Limitation of claim. Foreigners.
2. What to be deemed an abandonment of the claim.
3. Who hereafter entitled to take claims.

SEC.

4. Clerks of Probate Courts to be recorders of claims—to provide books—their fees.
5 How claims to descend.
6. Conflicting laws repealed.
7. When act to take effect.

WHEREAS, Doubts have arisen whether, or not, the land law of the late provisional government is in force: Therefore,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the land law of the late provisional government is hereby declared to be in force, according to the tenor and effect thereof; and any person who has complied, or may hereafter comply with its provisions, shall be taken and deemed to be in possession of every part of land included within his recorded boundary (provided said land claim does not contain more than six hundred and forty acres), and be entitled to all the remedies provided by law; but no foreigner shall be entitled to the benefits of said act, hereby revived, who shall not have, within six months after the passage of this act, filed his declaration of intention to become a citizen of the United States.

SEC. 2. That so much of the above recited act, as permits claimants thereunder to pay five dollars annually, in place of occupancy, or in case of absence from the Territory, be, and the same is hereby repealed; but where a claimant continues to improve upon or cultivate a land claim, it shall [not] be necessary for him to reside on his claim; but hereafter, the neglect to reside upon, or otherwise to cultivate and improve said claim for the space of six months, shall be deemed an abandonment of said claim.

SEC. 3. No person who is not a white male citizen of the United States, over the age of eighteen years, shall hereafter be entitled to take claims under the act hereby revived.

SEC. 4. The clerks of the Probate Courts shall be recorders of said claims within their counties; and they shall provide, at the expense of the county, books, in which they shall record all claims hereafter taken within their respective counties, for which they shall receive the sum of fifty cents from each claimant, and the further sum of fifty cents for giving a certificate thereof.

SEC. 5. Land claims shall descend to, and be inherited by the heirs-at-law of the claimant, in the same manner as is provided by law for the descent of real estate.

SEC. 6. All laws conflicting with the provisions of this act, be, and the same are hereby repealed.

SEC. 7. This act shall take effect from and after its passage.

Passed, September 12th, 1849.

SHERIFFS.

AN ACT, *establishing and regulating the office of Sheriff.*

(213)

SEC.

1. Election—qualification—term of office.
2. Clerk to deliver certificate of election.
3. Vacancies—how filled.
4. Official bond, time of giving—amount—approval, conditions, &c.
5. Sheriff failing to give bond, office to be considered vacated.
6. Bond may be taken by the clerk in vacation, to be approved or disapproved by the Judges at the next term.
7. Bond to be valid until disapproved—not to be impaired by the disapproval of the Judge.

SEC.

8. Shall cause his certificate of election or appointment, oath of office endorsed thereon, &c., to be recorded
9. Sheriff may appoint deputies, subject to the approval of the Judge, &c.
10. Deputies—power, and duties.
11. Sheriff to keep the peace—cause offenders to enter into recognizances, &c.
12. Sheriff to quell assaults, affrays, and execute all process, &c.
13 When elisor, duties, qualifications.
14. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected in each county in this Territory, a Sheriff, who shall have qualifications of a voter, and hold his office for two years, and until his successor shall be elected and qualified.

SEC. 2. When any person shall be elected sheriff, the clerk of the Probate Court shall deliver to him a certificate of his election, under the seal of the court.

SEC. 3. When a vacancy happens in the office of sheriff, the clerk of the Probate Court shall cause three advertisements to be put up at public places in each township in his county, one of which shall be at the place of holding the general election, stating the office to be filled, the time and place of holding the election, which time shall be at least ten days from the putting up such advertisement, unless such vacancy shall happen within six months of the general election; then it shall be the duty of the Probate Court to appoint some person to fill such vacancy, who shall possess the same qualifications as prescribed in the first section of this act.

SEC. 4. Every sheriff shall, within fifteen days after he receives the certificate of his appointment, or election, give bond to the Territory in a sum not less than five thousand, nor more than fifty thousand dollars, with securities approved by the Judge of the District Court, conditioned for the faithful discharge of his duties;

which bond shall be filed in the office of the clerk of the District Court of the county.

SEC. 5. If any sheriff fail to give such bond within the time prescribed, the office shall be considered vacated.

SEC. 6. Such bond may be taken by the clerk of the District Court, in vacation; if so taken, approved or disapproved by the Judge thereof, at the next term.

SEC. 7. Such bond shall be valid until disapproved, nor shall its obligations be impaired by the disapproval of the Judge.

SEC. 8. Every sheriff shall, before he enter on the duties of his office, cause his certificate of election or appointment, with the oath of office to be endorsed thereon; and his bond, with the approval thereon, to be recorded in the office of the recorder of the county.

SEC. 9. Any sheriff may appoint one or more deputies, with the approbation of the Judge of the District Court; and every such appointment, with the oath of office endorsed thereon, shall be filed in the office of the clerk of the District Court of the county.

SEC. 10. Every deputy-sheriff shall possess all the power, and may perform any of the duties prescribed by law, to be performed by the sheriff.

SEC. 11. Every sheriff shall keep the peace, and cause all offenders against the law in his view, to enter into recognizance, with security to keep the peace, and to appear at the next term of the District Court of the county; and to commit to jail, in case of failure. The sheriff shall certify and return such recognizance to the clerk of the District Court.

SEC. 12. Every sheriff shall quell and suppress assaults and batteries, affrays and insurrections; he shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority; and he shall attend upon all courts of record, at every term.

SEC. 13. If the office of sheriff be vacant, the clerk of the Probate Court may appoint an elisor, who shall perform all the duties of sheriff, until a sheriff be qualified; and shall give bond and make oath as sheriffs are required to do.

SEC. 14. This act to take effect and be in force, from and after the 29th day of September.

Passed, September 28th, 1849.

AN ACT, *supplementary to an act entitled "An Act to define the duties of Sheriff," passed July*, 1849.

(2-14)

SEC.
1. Where no district clerk, sheriff to give bond, &c., to the Probate Court, or clerk in vacation.
SEC
2. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the sheriff in any county or counties, in which there is no clerk of the District Court, be required to give bond to and receive the oath of office from the Probate Court, or the clerk of the same in vacation, in the same manner and subject to the same conditions, as is now required by law.

SEC. 2. This act to take effect and be in force, from and after its passage.

Passed the House of Representatives, December 30th, 1850.
Passed the Council, January 1st, 1851.

SUPERVISORS.

AN ACT, *defining the duties of Supervisors.*

(2-15)

SEC.
1. Persons liable to labor.
2. Penalty of delinquents.
3. Persons having performed labor to get a certificate from supervisor.
4. Time to appear on road, and tools furnished.
5. Persons exempt.
6. In cases of sickness.
7. Road districts formed.
8. Fines—how collected and paid.
9. To open and repair roads.
10. Damages in making or laying out road.
11. Guide-posts to be set up
SEC.
12. Supervisors to make repairs—power to call out laborers.
13. Certificate assignable.
14. Trustees to settle accounts.
15. Forfeiture of supervisors for giving false certificate.
16. Compensation of supervisor.
17. County commissioners to appoint supervisors, and penalty for injuring or removing guide-posts.
18. Width of bridges. 17th Section to be given in charge to grand-juries.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That all male persons, between twenty-one and fifty years of age, who have resided one month in this Territory, and who are not a county or township charge, or otherwise exempt by law, shall be liable yearly to do and perform two days' work on the public road, under the direction of the supervisor, within whose district they may respectively reside.

SEC. 2. That it shall be the duty of every supervisor to order out every such person, resident as aforesaid, between the first day of April and October, annually, to do and perform the work aforesaid, on the public roads within his district, and if any such resident being personally warned by the supervisor, or by leaving a written notice at his place of abode, or by some person under the direction of the supervisor, by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice to attend, by himself or substitute to the acceptance of the supervisor, on the day, and at the time and place directed by the supervisor; or having attended, shall refuse to obey the directions of the supervisor, or shall spend the time in idleness and inattention to the duties assigned him, every such delinquent shall forfeit and pay for each day he shall so refuse or neglect to, or for any of the offences above specified, the sum of five dollars, to be recovered by action of debt, before any Justice of the Peace, having jurisdiction thereof, at the suit of the supervisor within whose district such delinquent may reside, and the money so collected, shall be paid over to the township treasurer, and accounted for by the supervisor at the annual settlement with the trustees of his township: *Provided*, That in counties where townships are not organized, such forfeiture shall be paid into the treasury, and appropriated as provided for in this act.

Sec. 3. That in case any person shall remove from one district to another, who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in other respects has paid the whole or any part of the amount aforesaid, in lieu of said labor, and shall produce a certificate of the same from the supervisor of the proper district, such certificate shall be a complete discharge for the amount therein specified.

Sec. 4. That every person called upon to perform any labor upon public roads and highways, under any of the provisions of this act, shall appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; and the supervisor may, if necessary for the improvement of the roads, order any person owning the same, to furnish a team of horses or oxen, and wagon, cart, scraper or plough, to be employed or used on the roads, under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plough, in discharge of any labor due from said person.

Sec. 5. That all persons who may be deemed by the supervisor unable to perform, or cause to be performed, the two days' work required by this act, shall be exempted from the requisition of the same.

Sec. 6. That whenever it shall happen in consequence of sickness, absence from home, or any other cause, that the two days' work aforesaid, shall not be performed within the time specified in this act, the supervisor shall be authorized to require the performance of such work at any other time.

Sec. 7. That the county commissioners, or the trustees of townships when the same shall be organized, shall, as often as they may deem it necessary, but not oftener than once a year, divide their respective counties or townships, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county or township records, and in case any public road shall be established as a part of the line or boundary of any township, where townships are organized, the trustees of the adjoining townships shall meet at some convenient place, as soon after such division as convenient, and apportion such roads between the two townships, as justice and equity may require, for the purpose of opening and improving the same; and the supervisor and inhabitants of such township, shall be bound to work on said road or roads accordingly.

SEC. 8. That the several supervisors within their respective districts, shall collect, by suit or otherwise, all fines, forfeitures, and penalties arising and accruing under the provisions of this act, unless the collection thereof is herein provided for, and pay the same into the township treasury, if the townships are organized, on or before the first Monday in March; otherwise in the county treasury, on or before the first Monday of April annually, taking the treasurer's receipt for the same, which receipt shall be the proper voucher for the supervisor to settle with the trustees or county commissioners for the amount thereof; and all fines and forfeitures sued for and recovered under the provisions of this act by any other person than a supervisor, shall be paid over within twenty days, by the Justice of the Peace, or constable collecting the same, to the township treasury, if townships are organized; if not, to the county treasurer, taking a receipt therefor; and the trustees of townships, or county commissioners, shall cause all moneys so paid into the township or county treasury, to be immediately appropriated to repairing the public roads in such road district wherein such fine or forfeiture accrued; and if any person shall be sued for doing or performing any act or thing required or authorized by this act, such person may plead the general issue, and give this [act] and the special matter in evidence, and no suit or action shall be brought or maintained, unless it shall have been commenced within six months after the cause of such action shall have arisen: *Provided*, That nothing in this section shall be so construed as to prevent the trustees of townships, or county commissioners, from collecting or recovering any moneys in the hands of the township or county treasurers, or supervisors of roads and highways.

SEC. 9. That it shall be the duty of each and every supervisor to open, or cause to be opened, all public roads and highways which have been, or may hereafter be laid out and established, through any part of the district assigned to such supervisor, and keep the same in repair; for which purpose the supervisors are hereby authorized to enter upon any unimproved lands, near or adjoining the public roads, to cut and carry away any timber, to dig or cause to be dug and carried away, gravel, sand, or stone, or gather any loose stone which may be necessary to improve or repair the roads, and to enter on any lands adjoining or lying near to the roads; to make such drains or ditches through the same as they deem necessary for the benefit of the roads, doing as little injury as may be to said lands; and the drains or ditches so made, shall not be stopped or obstructed by the owner or occupant of such lands, or any other person or persons, under the penalty of forfeiting a sum not exceeding twenty dollars for each offence, to be recovered and appropriated as provided in the preceding section of this act.

Sec. 10. That if any person or persons shall feel aggrieved by any supervisor's cutting or carrying any timber or stone, as aforesaid, they may make complaint thereof to the county commissioners of the proper county, at a regular meeting, within six months after the cause of such complaint shall exist; and the commissioners shall appoint three disinterested landholders of the county, whose duty it shall be, after taking an oath or affirmation to discharge their duty faithfully and impartially, to proceed and examine the matter complained of by the complainant, and assess and determine the damages, if any, and they shall report the same in writing to the commissioners, at their next meeting thereafter; and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable, they shall cause the same to be paid to the complainant out of the county treasury; but if upon view the said landholders should be of opinion that there is no grievance or just cause of complaint, the person so complaining shall pay the costs of such view.

Sec. 11. That each supervisor within his district shall erect, and keep up at the expense of the county, at the forks of every territorial or county road, a post and guide-board or figure board, containing an inscription in legible letters, directing the way and distance to the next town or towns, or public place or places, stationed on each road respectively, said post to be at least six inches in diameter, and not less than twelve feet high, and well set in the ground.

Sec. 12. That any time during the year when any public road shall be obstructed by the fall of timber, or any other cause, or any bridge shall be impaired so that the passage of teams or travellers on said road or bridge shall be damaged, and the supervisor in the district in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed, or bridge repaired forthwith; for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary, to remove such obstruction or repair said bridge; and the persons so ordered out, shall, after having had one day's notice to attend, as aforesaid, be subject to the same restrictions, and liable to the same penalties, as if ordered out under the provisions of the second and fourth sections of this act.

Sec. 13. That in all cases when any person shall, under the direction of his supervisor, perform more labor upon the public roads than may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate shall be assignable, and received for the amount specified in such certificate, in discharge of any labor within the same road district, which may be due from the holder of such certificate, in any succeeding year under the provisions of this act: *Provided*, That the preceding section shall not authorize any supervisor to require any person to perform more than two days' work in any one year, over and above the amount of labor due from such person, agreeably to the provisions of the first section of this act.

SEC. 14. That where townships are organized, the trustees shall meet at the place of holding township elections, on the first Monday of March annually, at which time and place the several supervisors of the township shall attend, and each produce his lists and amounts, together with the township treasurer's receipt for all fines, penalties, and forfeitures by him collected; and the trustees are hereby authorized and required to adjust and settle all amounts so produced to them, and allow such amount for delinquencies as they shall deem just and reasonable; and if, upon a fair and accurate settlement, there shall appear to be a balance due to any supervisor for his services under this act, the trustees shall give him an order on the township treasurer for the amount due: *Provided*, That the supervisor shall, in all cases, be held accountable for the full amount of labor due in his district, unless for good cause shown the trustees shall deem it just to remit the same; and *Provided further*: That in counties where townships are not organized, the county commissioners shall annually, on the first Monday in April, settle the accounts of the supervisors within the counties, agreeably to the provisions of this act; and the supervisors of such counties shall attend upon said commissioners on said day.

SEC. 15. That each and every supervisor who shall neglect or refuse to perform the several duties enjoined on him by this act, or who shall, under any pretence whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for labor performed or money paid, unless the labor shall have been performed, or money paid, prior to the giving or signing such receipt or certificate; every supervisor so offending shall forfeit, for every such offence, not less than five dollars, nor more than twenty-five dollars, to be recovered by indictment in the District Court, or by action of debt, before any Justice of the Peace having jurisdiction of the same; and it is hereby made the duty of the trustees of the township in counties where the same are organized, and county commissioners where townships are not organized, to prosecute all offences against the provisions of this act: *Provided*, That if any supervisor conceive himself aggrieved by the judgment of the Justice of the Peace, he may appeal to the District Court as in other cases.

SEC. 16. That each supervisor shall receive for his services, for each day employed under the provisions of this act over and above wo days, the sum of one dollar, to be paid out of the county treasury on the order of the trustees, where townships are organized; but in counties where townships are not organized, the supervisor shall be paid out of the county treasury, on the order of the county commissioners.

Sec. 17. That the several Boards of county commissioners, in counties where townships are not organized, shall annually, at their April session, appoint a suitable number of supervisors for such road districts as are not provided for by law; and they may fill vacancies at any time when they may occur, and shall cause the supervisors by them appointed to be notified thereof in writing; that any person who shall destroy, or in anywise deface or obliterate any guide-board or mile-post set up, according to the provisions of this act, shall be guilty of a misdemeanor; and upon conviction thereof, shall be fined in the sum of not less than ten, nor more than fifty dollars, and be imprisoned not less than one month, nor more than three months, at the discretion of the court.

Sec. 18. That bridges on territorial roads shall not be less than sixteen feet wide. It shall be the duty of the Judges of the District Court to give the foregoing section of this act in charge to the grand-juries, at each term of their respective courts.

Passed the Council, February 5th, 1851.
Passed the House of Representatives, February 6th, 1851.

SUPREME AND DISTRICT COURTS.

(216)

An Act, *to define the jurisdiction of the Supreme and District Courts.*

Sec.

1. Jurisdiction of Supreme Court.
2. Judgment and decrees final, where the amount in controversy does not exceed two thousand dollars.
3. May institute rules of practice, forms of process, &c.
4. If quorum not present, court to stand adjourned from day to day, for five days; then if quorum not present, to stand adjourned to the next term.
5. To have general supervision of all inferior courts. What writs may issue, &c.
6. Writs of error to be writs of right To issue within one year, &c. If party entitled to writ be infant, *feme covert*, &c, then one year after the removal of such disability. Writ may be sued out in vacation, to operate as *supersedeas*. Bond to be given to the opposite party. Approval of bond. Condition, &c, of bond. If execution has issued on judgment, clerk to issue *supersedeas* to sheriff. Execution not to issue thereafter, unless ordered by writ of *procedendo* from Supreme Court.
7. Appeal allowed from District to Supreme Court. For what amount. Appellant to give bond. File a transcript. To give notice to the opposite party twenty days before the next term of the Supreme Court. Proceedings thereon in Supreme Court.
8. Proceedings in Supreme Court on writs of error and appeals.
9. District Court—where held. Jurisdiction of the same. Judges to be conservators of the peace. Court in term time, or Judge in vacation, to award all writs necessary to the due execution of their powers.
10. Criminal jurisdiction of District Court.
11. Acts repealed.
12. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the Supreme Court of the Territory shall exercise appellate jurisdiction only as hereinafter provided, and shall have final and conclusive jurisdiction of all matters of appeal, writs of error upon law and upon fact, upon complaint from the judgments or decrees of any of the District Courts of this Territory, and from such other inferior courts as have been, or may hereafter be established by law, in all matters of law and equity, where the rules of law, or the principles of equity appear from the files, records, or exhibits of any such court, to have been erroneously determined.

SEC. 2. The said Supreme Court is hereby empowered and authorized to take cognizance of all such causes as may be brought before them in manner aforesaid, and to carry into complete execution all their judgments, orders, and decrees, according to the rules and practice of the common law and equity; and their judgments and decrees shall be final and conclusive over all persons concerned, in all cases where the amount in controversy does not exceed two thousand dollars.

SEC. 3. The said Supreme Court may, from time to time, institute such rules of practice, forms of process to be used, and rules for keeping the docket record and proceedings of said court, as shall be by them deemed conducive to the administration of justice.

SEC. 4. If there shall not be a quorum of the Justices of the Supreme Court on the first day of the term, the court shall stand adjourned from day to day for five days; and if from any cause said court shall not sit within that time, the court shall stand adjourned to the next court in course, and there shall be no discontinuance of any appeal, writs, or process by reason thereof.

SEC. 5. The said Supreme Court shall have the general supervision of all the inferior courts, to correct and prevent abuses, where no other remedy is provided by law, and shall have authority to issue writs of error, *certiorari*, *habeas corpus*, *procedendo*, *supersedeas*, and all other writs which may be necessary for the due execution of law, the administration of justice, and the perfect exercise of their jurisdiction.

SEC. 6. Writs of error from the Supreme Court to the District Court, shall be writs of right, and may be taken at any time within one year after the rendition of any judgment or decree by any party who may feel himself aggrieved by such judgment or decree; and if any party entitled to such writ of error shall be an infant, *feme covert*, *non compos mentis*, or out of the Territory, then in one year after the removal of such disabilities, or return to the Territory, writs of error may be sued out from the Supreme Court, or any Judge thereof, in vacation within the time aforesaid, and every writ of error, when issued, shall operate as a *supersedeas* of the judgment removed: *Provided*, The party, or some person in his behalf procuring the same, shall give bond to the opposite party, with good security, to be approved of by said

Judge, or by the clerk of the District Court where such cause was tried, conditioned truly to prosecute said writ of error, and to pay all costs, interest and damages, and the principal debt in case the judgment or decree of the court below shall be affirmed; such bond shall be in a sum sufficient to cover principal, interest, costs and damages; and upon filing said bond with the clerk of the District Court, conditioned and approved as above, it shall be the duty of said clerk (if any execution has been issued in said cause) to issue a writ of *supersedeas*, directed to the sheriff of the county, who shall stay all proceedings in his hands, and file the same with the clerk by whom it was issued; and said clerk shall not issue execution thereafter, unless ordered by writ of *procedendo* from the Supreme Court.

SEC. 7. Appeals shall be allowed from the District Court to the Supreme Court, upon final judgments and decrees in chancery, if prayed for at the time of the rendition thereof, when the sum in controversy between the parties for which such judgment or decree in chancery shall be rendered, shall amount, exclusive of costs, to the sum of twenty-five dollars, which appeal shall operate as a *supersedeas* of the judgment or decree appealed from, upon the appellant giving bond and security, as provided in the next preceding section, in cases of writs of error; and the party appealing or applying for a writ of error, shall file a transcript of the cause with the clerk of the Supreme Court, and shall cause notice in writing to be served upon the adverse party, or his attorney, of his having taken the cause to the Supreme Court, by appeal or writ of error (as the case may be), twenty days before the next term of the said Supreme Court; and if twenty days have elapsed from the time of serving said notice and the first day of the Supreme Court, the court shall proceed to hear and determine said cause, whether the defendant in error appear or not; if twenty days do not intervene, the cause shall be continued until the next term of the court, unless the defendant in error shall enter a voluntary appearance: whenever the defendant in error resides out of the Territory, and has no attorney therein, the plaintiff in error may cause publication of the cause to be made, according to such rules as the court may establish, and at the next term after such publication, the court shall proceed to hear the cause in such manner as if notice had been duly served.

SEC. 8. The Supreme Court shall give judgment according to the very right of the cause, and if the judgment shall be reversed from any informality or other proceedings not requiring a new trial in the court below, they shall give judgment as the District Court ought to have given, and issue execution in the same manner as the District Court ought to have done; and on all appeals or writs of error taken after the passage of this act, if the Supreme Court is satisfied the same was taken for delay only, they may give damage thereon, exclusive of interest, not exceeding ten per centum, against the plaintiff in error, or appellant. If the plaintiff in error, or appellant, shall not file a transcript of the cause, on or before the third day of the next term after taking the appeal or writ of error, the appellee may file a certificate of the clerk of the court below, that an appeal or writ of error has been taken in the cause, with the name or names of sureties in the appeal or writ of error, and the amount of said judgment and costs of suit; and thereupon it shall be the duty of the Supreme Court to dismiss the appeal or writ of error, with the same damages as in cases taken for delay.

SEC. 9. The District Court shall be held at the Court House, in each county, and the Judges thereof shall have jurisdiction over all matters and suits at common law and in chancery, arising in each county in their respective districts, when the debt or demand or cause of action shall amount to one hundred dollars and upwards, and in all cases of appeal or *certiorari* from a Justice of the Peace, Judge of Probate, or county court; and the said Judges shall be conservators of the peace, and the said court, in term time, or any Judges thereof in vacation, shall have power and authority to award throughout the Territory, returnable to the proper county, writs of injunction, *ne exeat*, *habeas corpus*, *quo warranto*, *mandamus*, and all other writs and process which may be necessary to the due execution of the powers with which they are or may be invested.

SEC. 10. The said courts shall respectively have authority to hear and determine all cases of crimes and misdemeanors whatsoever, that may be committed in any county in this Territory, that may be brought before them agreeably to the provisions of the laws of this Territory, and of the United States.

SEC. 11. That all acts coming within the purview of this act, be, and the same are hereby repealed.

SEC. 12. This act to take effect from and after its passage.

Passed, September, 1849.

AN ACT, *to amend "An Act concerning the Jurisdiction of the Supreme and District Courts."*

SEC.	SEC.
1. If district Judge not in attendance, court to stand adjourned, &c.	2. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the act entitled "Jurisdiction of the Supreme and District Courts," be, and the same is hereby amended, by adding at the close of section four, the following words, viz.: "And if the Judge of the District Court shall not be in attendance upon said court on the first day of the term, the court shall stand adjourned until the next day, and so from day to day,

for three days; and if, from any cause, said court shall not sit within that time, and shall not be adjourned by the sheriff, at the request of the Judge, to a day certain, the court shall stand adjourned to the next term in course; and there shall be no discontinuance of any appeal, suit, writ, process or proceeding, by reason thereof.

SEC. 2. This act to take effect and be in force, from and after its passage.

Passed the House of Representatives, February 5th, 1851.
Passed the Council, February 6th, 1851.

TERRITORIAL ROADS.

(215)

AN ACT, *to define the manner of locating Territorial Roads.*

SEC.
1. To be laid out within one year from the passage of the act authorizing the same.
2. Mode specified.
3. Certified return of survey and plat required.
4. Returned and recorded in office of secretary—also, in clerk's office of each county.

SEC.
5. Expense paid by counties.
6. Width of roads established.
7. No part of expense paid by Territory, except the road from Astoria to Wallamet valley.
9. Road from White's Ferry to Aquina Bay.
10. Act in force from passage.

SECTION 1. *Be it enacted by the Legislative Assembly of Oregon Territory,* That all territorial roads to be hereafter located and established within this Territory, shall be viewed, surveyed, and established, and returns made thereof, agreeably to the provisions of this act, within one year from the passage of the act by which said road or roads may be granted, or authorized to be laid out, respectively.

SEC. 2. The commissioners appointed to locate and establish any territorial road, shall cause the same to be correctly surveyed, and marked from the beginning, throughout the whole distance, by setting stakes in the prairie, at three hundred yards distance, and blazing trees in the timber; they shall establish mile-posts, which shall be marked with a marking iron, in regular progression, from the beginning to the termination of said road.

SEC. 3. The commissioners and surveyor of each road, shall make a certified return of the survey and plat of the whole length of said road, specifying, in said return, the width, depth, and course of all streams, the position of all swamps and marshes, and the face of the country generally; noting when timber and when prairie, and the distance said road shall have been located in each county.

SEC. 4. Said return and plat shall be signed by a majority of the commissioners, and the surveyor of said road, and forwarded to the secretary of the Territory, within sixty days after the view and survey of the same, to be by him recorded and preserved; they shall also, within sixty days as aforesaid, deposit in the office of the clerk of the Board of county commissioners of each county through which said road shall be laid, a return and plat as aforesaid, of so much of said road as shall be laid out and established in said county, to be there recorded as aforesaid.

SEC. 5. Said commissioners shall, after the completion of the survey of any road as aforesaid, make out a certified account of all services rendered, as well by the surveyor and other hands, as themselves; charging each county through which said road may have been laid, a proportion of the expense, agreeably to the number of days employed thereon; and the Board of commissioners of said county shall audit and settle the same.

SEC. 6. All territorial roads authorized to be laid out by any law of this territory, and not yet commenced, shall be laid out in the manner prescribed in this act; and the commissioners shall comply with all the regulations herein contained. *And further*, The established width of all territorial roads shall be sixty feet. ✓

SEC. 7. When any road shall have been located and established agreeably to the provisions of this act, the same shall be and remain a public highway, and shall be opened and worked by the counties through which it shall be laid, as county roads are; and no part of the expense of laying out, and establishing any territorial road, or the damages sustained by any person or persons, in consequence of laying out any territorial road, shall be paid out of the territorial treasury: *Provided*, That the expenses of locating and establishing the territorial road from Astoria to Wallamet Valley shall be paid out of the territorial treasury.

SEC. 8. The Act entitled "An Act to locate a territorial road from White's Ferry to the Aquina Bay," is not to be included in the provisions of this act.

SEC. 9. This act to take effect, and be in force, from and after its passage.

Passed the House of Representatives, January 31st, 1851.
Passed the Council, February 4th, 1851.

TOWN PLATS.

An Act, *in respect to the recording of Town Plats.*

(219)

Article.

I. Of the recording of town plats.
II. Of the vacation of towns, lots, streets, alleys, public squares and commons.

Article I.—*Of the recording of town plats.*

Sec.

1. Plat to be recorded before sale of lots.
2. Donations expressed on plats to have the effect of warranty deeds.
3. Additions to towns to be in like manner recorded.
4. Plats acknowledged.

Sec.

5. Penalty for non-compliance with the provisions of this article, and how recovered.
6. If former plats are found defective, new ones shall be acknowledged and recorded.

Section 1. Any person or persons, his, her, or their legal representatives, who may hereafter lay off any town within this Territory, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a correct copy of the plat of said town, with the public grounds (if any there be), streets, lanes and alleys, with their respective widths properly marked, and the lots regularly numbered in numerical order, and the size of the lots marked by reference to the plat of said town.

Sec. 2. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use, for the purposes intended by the donor or donors, grantor or grantors aforesaid.

Sec. 3. Every person hereafter laying off any lots in addition to any town in this Territory, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered an addition thereto.

Sec. 4. Every person whose duty it may be to comply with the foregoing requisitions, shall, at or before the time of offering such plat or other paper or papers for record, acknowledge the same before the recorder of the proper county, or some Justice of the Peace or notary public thereof, a certificate of which acknowledgment shall be, by the officers taking the same, endorsed on, or annexed to such plat or other paper, and recorded therewith, and form a part of said record.

SEC. 5. Every person who may lay off any town, or any addition to any town in this Territory, and neglect or refuse to comply with the requisitions of this article, shall forfeit and pay, for the use of said town, for every month he may delay a compliance with the provisions aforesaid, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by action of debt *qui tam*, or otherwise, in the name of the treasurer of the county.

SEC. 6. Where any town plat heretofore, or hereafter to be recorded, does not fully and clearly set out and describe the size of the lots, streets, alleys and corners of the lines of said town, and when donations have been given, or intended to be given, either to the public or to individuals, or to any religious society or societies, and it hath been neglected to insert the same on said lot; the proprietors of such town, or any of them, are hereby empowered and required to make out such other description as will more fully and clearly explain their true intentions, which shall be acknowledged, certified, and recorded, as required in this article.

ARTICLE II.—*Of the vacation of towns, lots, streets, alleys, public squares, and commons.*

SEC.
1. Application to vacate, how, by, and to whom made. And the notice to be given thereof.
2. County commissioners, when and how to vacate, if no opposition.
3. Proceedings, if opposition is made.
4. Part vacated, in whom to vest.
5. Consent of adjoining owner, when to be made.

SEC.
6. Application to the trustees, if the town is incorporated.
7. Part vacated in an incorporated town, where to vest
8. Owners of adjoining parts of a town may vacate
9. Owner of addition to any town may vacate,—*proviso*, as to the town of Portland.

SECTION 1. Whenever any person, or body corporate interested in any town in this Territory, not incorporated, or which has not a corporation in active operation, may desire to vacate any lot, street, alley, common, or any part thereof, or may desire to vacate any public square, or part thereof, in any such town; it shall be lawful for such person, or corporation, to petition the Board of county commissioners for the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, and the names of the persons to be particularly affected thereby; which petition shall be filed with the clerk of said Board, thirty days previous to the sitting thereof, and notice of the pendency of said petition shall be given for the same space of time, either in a public newspaper printed in said town, or by manuscript notices thereof, set up in three of the most public places in said town, containing a description of the property to be vacated.

SEC. 2. If no opposition be made to such petition or application, the Board of county commissioners may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable, and for the public good.

SEC. 3. If opposition be made thereto, such application shall be continued until the next term of said Board, at which time, if the objector shall consent to said vacation, or if the petitioner shall produce to the Board the petition of two-thirds of the property holders in said town of lawful age, the said Board may proceed to hear and determine upon said application, and may, if in their opinion justice require it, grant the prayer of the petitioner, in whole or in part.

SEC. 4. The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof, according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto, shall vest in the person or persons owning the property on each side thereof, in equal proportions, according to the length or breadth of such lots or ground, as the same may border on such street or alley.

SEC. 5. But no such vacation of a street or alley shall take place, unless the consent of the person or persons owning the property immediately adjoining to said street or alley, be obtained thereto in writing; which consent shall be acknowledged before some Justice of the Peace, or notary public, and be filed with said Board.

SEC. 6. In cases where any person interested in any incorporated town in this Territory, the corporate functions of which shall be in active operation, may desire to vacate any street, alley, or common, or any part thereof, it shall be lawful for such person to petition the trustees or other body, in like manner as persons interested in towns not incorporated, are authorized to petition the Board of county commissioners, and the same proceedings shall be had thereon before such trustees, or other corporate body having jurisdiction, as are authorized to be had before the Board of county commissioners; and such trustees, or other corporate body, may determine on such application under the same restrictions and limitations as are contained in the foregoing provisions of this article.

SEC. 7. Whenever a public square, or any part thereof, shall be vacated, the property thereof shall vest in the Board of county commissioners, for the use of the proper county; and whenever any common, or any part thereof, in any incorporated town, or belonging thereto, shall be vacated, the same shall vest in the trustees, or other corporate body, for the use of such town; and the proper authorities may sell the same, and make a title to the purchaser thereof, and appropriate the proceeds thereof, for the benefit of said corporation or county, as the case may be.

SEC. 8. In all cases where two or more persons have laid out, or shall hereafter lay out, a town, or lands contiguous and adjoining to each other, and such town does not improve; either of the individuals holding all the legal rights, title, and interest in all the lots so laid off by such party, and attached, may have the same vacated, as in a case of a lot, street, or alley, on application of the party laying out such addition, or part of said town, or on the application of such person as may acquire, or derive the legal title to the land and lots in such addition; and in no case shall persons purchasing lots in other additions of said town, be capable of making any valid objections to such vacation, if such vacation does not obstruct any public road laid out and established by law.

SEC. 9. If any person shall lay off an addition to any town, which does not improve, and shall ~~be~~ the legal owner of all the lots contained in such addition, such person, or any other person who shall become the legal owner thereof, may have such addition or any part thereof vacated, in like manner as provided in the last preceding section: *Provided*, Nothing in this act shall be so construed as to affect public levees on river banks at Portland.

Passed the House of Representatives, February 1st, 1851.
Passed the Council, February 4th, 1851.

TREASURY DEPARTMENT.

AN ACT, *to regulate the Treasury Department.*

(220)

ARTICLE I. The organization of the department.
II. Of the auditor; his general duties.
III. The auditor; of the settlement of claims and accounts.
IV. Of the treasury.
V. Miscellaneous provisions.

ARTICLE I.—*The organization of the Department.*

SEC.
1. Treasury Department established, embracing the offices of treasurer and auditor.
2. Where to reside and keep their offices.
3. Auditor and treasurer to be commissioned to take oath and give bond.
4. Penalty for performing official acts before complying with the preceding section.
5. Treasurer to give bond to the Governor, with not less than five securities. Its condition.
6. Oath to be taken by securities.
7. Approval of the bond to be endorsed, and delivered to the secretary of the Territory.
8. Auditor and treasurer not to be commissioned until bond given.
9. Auditor and treasurer to keep a seal of office.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, A separate department is hereby established, to be called the Treasury Department; which shall embrace the offices of the territorial treasurer, and the auditor of public accounts.

SEC. 2. The treasurer and auditor shall reside, and keep their respective offices at the seat of government.

SEC. 3. The treasurer and auditor shall be commissioned by the Governor; and before entering upon their respective duties, shall take oath of office before any Judge or Justice of the Peace prescribed by the laws of this Territory, and shall cause the same to be endorsed on their respective commissions, and shall respectively give the official bonds required by law.

SEC. 4. If the treasurer or auditor shall perform any official act, before complying with the requirements of the preceding section, he shall forfeit and pay five hundred dollars for the use of the Territory.

SEC. 5. The treasurer shall, immediately after his appointment, execute and deliver to the Governor a bond to the Territory, in the sum of twenty-five thousand dollars, with not less than five securities to be approved of by the Governor, conditioned for the faithful performance of all the duties required, or which may be required of him by law; and the auditor shall in like manner execute his bond in a sum not less than ten thousand dollars, with not less than three securities.

SEC. 6. The Governor shall endorse on the bond his approval thereof, stating the time of approval, and deliver the same to the secretary of the Territory, who shall record, and keep the same in his office.

SEC. 7. No commission shall issue to any auditor or treasurer, until he has given bond and security as required by law.

SEC. 8. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers, and documents required by law, to be certified from either of said officers, respectively; and copies of all papers and documents lawfully deposited in either of said offices, when certified by the officer, and authenticated by the seal of office, shall be received in evidence in the same manner, and with the like effect, as the original.

ARTICLE II.—*Of the Auditor—his general duties.*

Sec.

1. Auditor declared to be the general accountant of the Territory; his duties, &c.
2. Auditor to prepare and make certain reports at the commencement of each session of the Legislative Assembly.
3. Certain other duties enjoined on the auditor.

SECTION 1. The auditor of public accounts is declared to be the general accountant of the Territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the Territory; and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

SEC. 2. It shall be the duty of the auditor to digest, prepare, and report to the Legislative Assembly at the commencement of each annual session:—

1st. A full and detailed statement of the condition of the revenues, and the amount of the expenditures for the last fiscal year.

2d. A full and detailed statement of the public debt.

3d. Estimate of the revenue and expenditures for the next succeeding year.

4th. Such plans as he may deem expedient for the support of public credit; for lessening the public expenses; for using the public money to the best advantage; for promoting frugality and economy in public offices; and generally, for the better management and more perfect understanding of the fiscal affairs of the Territory.

5th. A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.

6th. A tabular statement, showing separately the amount of money received into the treasury, from all sources, in the preceding fiscal year; the amount received from each county, and each source of revenue in each county.

SEC. 3d. It shall be the duty of the auditor :—

1st. To audit, adjust, and settle all claims against the Territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons.

2d. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law.

3d. To express in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law, out of which the same is to be paid.

4th. To audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury.

5th. To keep an account between the Territory and the territorial treasurer.

6th. To keep an account of all debts and credits between the Territory and the United States.

7th. To direct prosecutions in the name of the Territory for all official delinquencies in relation to the assessment, collection, and payment of the revenue, against all persons who, by any means, become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the Territory.

8th. To procure from the proper officers an abstract and description of all taxable lands within the Territory, not yet procured, and annually, hereafter, abstracts and descriptions of such lands as shall become taxable.

9th. To transmit to the clerk of each county commissioners' court, annually, a descriptive list of all taxable lands in such county.

10th. To give information in writing, to either House of the Legislative Assembly, whenever required, upon any subject relating to the fiscal affairs of the Territory, or touching any duty of his office.

11th. To perform all such other duties as may be required by law.

Article III.—*The Auditor—of the settlements of Claims and Accounts.*

Sec.

1. Collectors and others to exhibit their accounts to the auditor. When—his duties thereon.
2. Balance found due to the Territory to be paid in ten days; delinquent to be charged his commission and two and a half per cent. per month.
3. Claims against the Territory to be audited within two years. What debts and claims may be set off against the Territory.
4. In the settlements of accounts, auditor may examine parties, witnesses, &c., on oath—when.
5. Accounts, documents, &c., settled, to be preserved in his office. Copies to be given when required.
6. Auditors to draw warrants upon the treasury—when no money to be drawn for unless appropriated by law.
7. Persons dissatisfied with decisions of auditors, &c.—proceedings.
8. When claims are audited and no appropriation for their payment—duty of the auditor.
9. Auditor to make report to the Legislative Assembly; list of collectors, &c., who have not settled.

Section 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor, on or before the first Monday in December, in each year, to be audited, adjusted and settled; and the auditor shall proceed without any unnecessary delay, to audit, adjust, and settle the same, and report to the treasurer the balance found due.

Sec. 2. If any of the persons mentioned in the preceding section, shall fail to pay the amount so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the Territory the amount of his commission allowed him by law; and also two and a half per cent. a month, on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

Sec. 3. All persons having claims against the Territory, shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claim shall accrue, and not afterwards. And in all suits brought in behalf of the Territory, no debt or claim shall be allowed against the Territory, as a set-off; but such as have been exhibited to the auditor, and by him allowed or disallowed; except only in cases where it shall be proved to the satisfaction of the court, that the defendant at the time of trial is in possession of vouchers, which he could not produce to the auditor; or that he was prevented from exhibiting the claim to the auditor, by absence from the Territory, sickness, or unavoidable accident.

SEC. 4. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others, on oath or affirmation, touching any matter material to be known in the settlement of such account; and for that purpose may issue writs of summons, and compel witnesses to attend before him, and give evidence in the same manner, and by the same means, allowed by law to courts of record.

SEC. 5. All accounts, vouchers, and documents, settled or to be settled by the auditor, shall be preserved in his office; and copies thereof, authenticated by the official seal, shall be given to any person interested therein who shall require the same.

SEC. 6. In all cases of accounts audited and allowed against the Territory, in all cases of grants, salaries, pay and expenses, allowed by law, the auditor shall draw warrants upon the treasury for the amount, in the form used in the treasury department; but no such warrant shall be drawn by the auditor, or paid by the treasurer, unless it has previously been appropriated by law; nor shall the whole amount drawn for and paid under any one head, ever exceed the amount appropriated by law for that purpose.

SEC. 7. If any person interested, shall be dissatisfied with the decision of the auditor, on any claim, account or credit; it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons of his decision, to the Legislative Assembly.

SEC. 8. In all cases where the laws recognize a claim for money against the Territory, and no appropriation shall be made by law to pay the same, the auditor shall audit, and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded; and shall report the same to the Legislative Assembly, with as little delay as possible.

SEC. 9. The auditor shall report to the Legislative Assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled, according to law; and the reasons therefor.

ARTICLE IV.—*Of the Treasurer.*

SEC.
1. Territorial treasurer to perform certain duties.
2. Treasurer to grant duplicate receipts—in what cases—duty of person receiving same; and of the auditor in such cases.

SECTION 1. It shall be the duty of the territorial treasurer:—

1st. To receive and keep all the moneys of the Territory, not expressly required by law to be received and kept by some other person.

2d. To disburse the public moneys upon warrants drawn upon the treasury, according to law, and not otherwise.

3d. To keep a just, true, and comprehensive account of all moneys received and disbursed.

4th. To keep a just and true account of each head of appropriation made by law, and the disbursements under the same.

5th. To render his account to the auditor for settlement quarterly, or oftener if required.

6th. To report to each House of the Legislative Assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding year.

7th. To give information in writing to either House of the Legislative Assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office.

8th. To perform all such other duties as may be required by law.

Sec. 2. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

ARTICLE V.—*Miscellaneous Provisions.*

SEC.
1. Auditor and Treasurer, *pro tem.*, may be appointed in certain cases.
2. The compensation.
3. Upon new appointment, settlements to be made with former auditor or treasurer.
4. Auditor and treasurer may administer oaths.
5. May have access to each other's office
6. Auditor and treasurer to keep letter book, in which they shall copy official letters.

SEC.
7. Auditor issuing unauthorized warrants on the treasury—penalty.
8. Treasurer refusing payment of warrant unlawfully—penalty.
9 Wilful neglect of duty, oppression, extortion, &c., by auditor or treasurer—penalty.
10. Accounts audited, &c., and found due to the State, to be a lien on the property of the person charged.

SECTION 1. In case of death, sickness, absence from the Territory, resignation, removal from office, or impeachment of any auditor or treasurer, it shall be lawful for the Governor to make an appointment, for the time being, of some suitable person to perform the duties of such office, until a successor can be appointed according to law, or until such absence or disability shall cease.

SEC. 2. Any person appointed by the Governor, in virtue of the preceding section, shall receive the same compensation allowed by the law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

SEC. 3. Immediately after the appointment and qualification of any auditor or treasurer, the Legislative Assembly, if in session, and if not in session, then the first week of the next session, shall cause settlement to be made in manner above provided, of the former auditor or treasurer's accounts remaining unsettled; and shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement, showing the balance of moneys, securities and effects for which he is accountable, and what has been delivered to his successor.

Sec. 4. The auditor and treasurer shall each have power to administer all oaths and affirmations required or allowed by law, in matters touching the duties of their offices.

Sec. 5. The auditor and treasurer shall have free access to each other's offices, for the inspection of all books, accounts, and papers, which they respectively contain, and free access to all the other offices of the Territory, for the inspection of all such books, accounts, and papers, as concern any of their duties.

Sec. 6. The auditor and treasurer shall each keep a letter-book, in which shall be copied all official letters which they may write.

Sec. 7. If the auditor shall knowingly issue any warrant upon the treasury, not authorized by law, he shall, upon conviction thereof, be fined in any sum not exceeding fourfold the amount of such warrant, and imprisoned for any length of time, not exceeding one year; and shall be deemed guilty of misdemeanor in office.

Sec. 8. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof, fourfold the amount of such warrant, to be recovered by action against the treasurer and his securities, on his official bond, or otherwise, according to law; and the treasurer shall be deemed guilty of a misdemeanor in office.

Sec. 9. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty; shall receive any fee or reward for the performance of any legal duty, not allowed by law; or, by color of his office shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the Territory any sum not exceeding one thousand dollars, and be deemed guilty of a misdemeanor in office.

Sec. 10. The amount of every account audited, adjusted, and found due to the Territory, according to this law, with the penalties and interest thereon, is declared to be a lien upon all real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

Passed the Council, February 4th, 1851.
Passed the House of Representatives, February 4th, 1851.

VACANCIES.

(271)

An Act, *to authorize the Governor to fill vacancies.*

Sec.
1. Territorial offices. Governor to fill vacancies.

Sec.
2. County officers. When Governor to issue proclamation for election.
3. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the Governor be, and is hereby authorized to fill all vacancies that may occur of territorial offices; such appointments only to continue in force until the meeting of the Legislature next ensuing after such appointment.

Sec. 2. *Be it further enacted,* That whenever vacancies occur in county offices, and there is no provision of law to fill the same, the Governor be, and he is hereby authorized to issue his proclamation, calling an election to fill such vacancies.

Sec. 3. *Be it further enacted,* That this act take effect and be in force, from and after its passage.

Passed, May 16th, 1850.

WAR CLAIMS.

(272)

An Act, *to provide for settling Cayuse war claims.*

Sec.
1. Commissioner to be elected by Assembly.
2. To take official oath.
3. Claimants to be sworn, and produce corroborative testimony.
4. To ascertain value or price when not fixed by law.
5. To ascertain and allow set-off of government.
6. Power of commissioner to issue subpœna and attachment.
7. All claims to be adjusted by commissioner.

Sec.
8. To report to the Assembly at each session.
9. Claims to be recorded, and certificates given.
10. Commissioners to sit monthly.
11, 12, 13, 14. To provide books. His *per diem*, and term of office, and to report
15. Empowered to demand books and papers, &c.
16. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected by joint ballot of both Houses, a commissioner on Cayuse war claims, whose duty it shall be to investigate all claims growing out of, or pertaining to the Cayuse war.

Sec. 2. The said commissioner, before he enters upon the duties of his office, shall take and subscribe an oath, faithfully and impartially to discharge the duties imposed on him by this act; and shall file the oath, by him so subscribed, in the office of the secretary of the Territory, which oath may be administered by any person authorized to administer oaths.

SEC. 3. In the investigation of any claim under this act, the oath of the claimant may be taken; but no claim shall be allowed upon the oath of the claimant alone, unless corroborated by such other circumstances as, in connection therewith, shall satisfy the commissioner of the truth and justice of the same.

SEC. 4. In all cases wherein the price or value may be fixed by law for the thing or things upon which a claim may be based, the said commissioner shall be governed thereby; and in all cases wherein no price or value shall be so fixed, he shall determine the price or value thereof, according to the equity and justice of the case.

SEC. 5. The said commissioner shall diligently inquire of and concerning debts, demands, and set-offs, which the government may have against the claimant, and deduct the same from the claim allowed such claimant.

SEC. 6. The said commissioner shall have power to subpœna and swear parties and witnesses, and compel their attendance; and the sheriff of any county shall execute subpœnas on the part of the government, and any attachment issued on the part of a party, or the government.

SEC. 7. All claims growing out of or pertaining to the Cayuse war, before being paid, shall be presented to the said commissioner for settlement and adjustment, and by him reported as herein provided.

SEC. 8. At the commencement of every session of the Legislative Assembly, the said commissioner shall report a list of claimants, and the amount allowed each; also a list of claimants whose claims may have been by him rejected; and no claim which shall not have been *bona fide* passed on by said commissioner, shall undergo an investigation by the Legislature.

SEC. 9. All claims allowed by said commissioner shall be by him recorded in a book, to be provided at the expense of the Territory, and a certificate of such allowance given to the proper claimant.

SEC. 10. The said commissioner shall keep his office at the seat of government, and shall sit for the investigation of claims the first Monday in each month, and continue his session six days, if business require it.

SEC. 11. Books and stationary necessary in the discharge of the duties imposed by this act, shall be provided by said commissioner at the expense of the Territory.

SEC. 12. The said commissioner shall be allowed five dollars per day, for each day he may be actually engaged in the discharge of the duties of his office, to be audited and paid out of the territorial treasury.

SEC. 13. And said commissioner shall hold his office for one year, and until his successor shall be appointed and qualified.

SEC. 14. The said commissioner shall report to the present session of the Legislature, if required by either House of Assembly.

SEC. 15. *And be it further enacted*, That as soon as the said commissioner shall be duly qualified, he shall have power, and he is hereby authorized and required to apply for, demand, and receive, all books and papers, of whatsoever name or kind, in any manner connected with, or growing out of the late Cayuse war, in whosesoever hands or possession such books or papers, or any of them, may be; and it is hereby made the duty of all officers and others being in possession of such books or papers, on demand being made as aforesaid by said commissioner, to immediately pass such books and papers over to said commissioner; and in case such books and papers are not handed over, said commissioner is hereby authorized to issue an attachment for the same.

SEC. 16. This act to take effect, and be in force from and after its passage.

Passed, August 31st, 1849.

WATER COURSES.

(223)

AN ACT, *giving concurrent jurisdiction to the District Courts over water courses forming a boundary between Judicial Districts.*

SEC.

1. District Courts to have concurrent jurisdiction over water courses, forming boundaries, &c.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That for judicial purposes, any law making water courses a boundary between counties of different judicial districts, shall be construed to include such water courses within the boundary of both districts, and the jurisdiction of the District Courts of the respective districts within the proper counties shall be concurrent; but the court which shall first take cognizance of any matter of business, under the provision of this section, shall retain the same, to the exclusion of the other.

Passed, September 6th, 1849.

WILD ANIMALS.

An Act, *offering a bounty for killing Wild Animals.*

Sec.
1. County courts may offer bounty.
2. Oath by party claiming.
3. Justice to grant certificate.

Sec.
4. Bounty to be paid at county treasury, or received for taxes.
5. When act to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the County Court of each county may, if they think proper, offer a bounty for killing wild animals.

Sec. 2. That before any person shall be entitled to receive any bounty offered by any county court, the person claiming to have killed the said animal, or animals, shall go before a Justice of the Peace of the county where said animal, or animals, was killed, and make oath that the scalp, with two ears thereto, is the scalp of the animal, or animals, killed by him within the limits of the said county, and west of the summit of the Cascade Mountains, and the time when killed.

Sec. 3. It shall be the duty of the Justice of the Peace, before whom any person shall appear with a scalp of any of the animals allowed by the county court, after administering to said person the oath above specified, and upon the said Justice becoming satisfied that said person is the person who killed said animal, to give said person a certificate, as follows:

"This certifies that A. B. (here name the person who killed the animal), on or about the (here state the date of killing the animal), killed a (here describe or name the animal), in the county of (here name the county), for which he is entitled to the sum of dollars or cents, out of any money in the county treasury not otherwise appropriated.

"Given under my hand this (here date.)

"I. A., Justice of the Peace."

And the said Justice of the Peace is requested forthwith to burn the scalp.

Sec. 4. Said certificate, or bounty, shall be paid out of any money in the county treasury of the county in which said certificate shall be issued; and shall be a legal tender, for the amount specified in said certificate, to the collector of county revenue, in the payment of county tax; and no certificate shall issue to any person for killing any of the aforesaid animals, only in the county where said animal shall be killed, and shall not be received in payment of taxes, or paid in any other county but the county in which said certificate shall issue.

Sec. 5. This act shall take effect and be in force, from and after its passage.

Passed the Council, January 28th, 1851.

WILLS.

An Act, *respecting Wills.*

Sec.
1. Who may devise, and what may be devised.
2. Same subject.
3. Married woman not to make will, unless—
4. How will made.
5. Person subscribing testator's name, to witness will, &c.
6. How expressly revoked or cancelled.
7. When revoked by birth of child.
8. Will made by *feme sole*, revoked by subsequent marriage.
9. What shall not be deemed a revocation.
10. Same subject.
11. Child, or descendants of such child, not named in will, to have their portion of estate.
12. Effect of advancement.
13. Devises in certain cases not to lapse.
14. When revocation of second will, not to revive the first.
15. Probate Court, or clerk, to admit will to probate.
16. When will admitted to probate.
17. How and when will proved—certificate of probate or rejection.
18. If witness sick, or non-resident of the Territory.
19. Same subject.
20. If witnesses dead, incompetent, or gone to parts unknown.
21. Same subject.
22. Testimony in support of a will, to be reduced to writing, &c.
23. Nuncupative will—requisites thereof.
24. Mariner or soldier may dispose of wages, &c.
25. Proof of nuncupative will—how and when made.
26. Same subject.
27. Wills to be recorded and filed.
28. Exemplification to have the same force as original.

Sec.
29. Same subject.
30. Land devised in different counties—copy of will to be recorded in such county.
31. Persons interested may contest will, &c., in chancery, within five years after probate.
32. Verdict of the jury final—saving, &c.
33. After five years uncontested, probate binding—saving to infants, &c.
34. When the testimony of subscribing witness may be read on trial.
35, 36, 37. Effect of will made in another state, territory or country, &c., and admitted to record here.
38, 39, 40. Effect of witness being a devisee or legatee.
41. Creditor of estate competent witness.
42. Witness who is a devisee or legatee, releasing or refusing to accept, &c.,—effect of.
43. Credit of such witness, for the court or jury.
44. Effect of witness's death, &c., before testator.
45. Witness to a will, barred from receiving under it, except, &c.
46. Devise for life and limitation to heirs—how construed.
47. When whole estate of the devisor to pass by the devise.
48. When estate devised taken to pay debts, other devisees to contribute.
49. Order for contribution may be enforced in District Court.
50. Construction of the term "will," in this act.
51. Courts to pay due regard to the intention of the testator, &c.
52. Probate Court may attach persons refusing to produce will for probate.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That every person of twenty-one years of age, and upwards, of sound mind, may, by last will, devise all his estate, real, personal, and mixed, and all interests therein, saving to the widow her dower.

Sec. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels.

SEC. 3. No married woman shall be capable of making a will, unless she have power to do so by marriage settlement, or authority in writing, executed by her husband before marriage.

SEC. 4. Every will shall be in writing, signed by the testator, or by some person by his direction, in his presence, and shall be attested by two or more competent witnesses subscribing their names to the will, in presence of the testator.

SEC. 5. Every person who shall sign the testator's name to any will, by his direction, shall subscribe his own name, as a witness to such will, and state that he subscribed the testator's name at his request.

SEC. 6. No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked, except by a subsequent will in writing, or by burning, cancelling, tearing, or obliterating the same by the testator, or in his presence, and by his consent and direction.

SEC. 7. If, after making a will, disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

SEC. 8. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

SEC. 9. A bond, covenant, or agreement made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance, or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

SEC. 10. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate previously executed; the devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

SEC. 11. If any person make his last will, and die, leaving a child, or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child, or children, or their descendants not provided for, shall be deemed to die intestate; and such child, or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportionate part.

SEC. 12. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

SEC. 13. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate real and personal, as such devisee would have done, in case he had survived the testator.

SEC. 14. If after making any will, the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

SEC. 15. The Probate Court, or clerk thereof in vacation, subject to the confirmation or rejection of the court, shall take proof of last wills.

SEC. 16. If the testator has a mansion-house, or known place of abode in any county, his will shall be there proved; if he have no place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie; and if he shall have no residence, and there be no lands devised, the will shall be proved in the county in which the testator died, or if he died out of the Territory, then in any county.

SEC. 17. When any will is exhibited to be proven, the court or clerk may immediately receive the proof, and grant certificate of probate, or if such will be rejected, grant a certificate of rejection.

SEC. 18. If any witness shall be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the Territory, or more than sixty miles from the place where the will is to be proved, such court or clerk may issue a commission annexed to such will, and directed to any Judge or Justice of the Peace, or Mayor, or other chief magistrate, empowering him to take and certify the attestation of such witness.

SEC. 19. If such witness appear before such officers, and make oath or affirmation, that the testator signed the writing annexed to such commission, as his last will, or that some other person signed it by his direction, and in his presence; that he was of sound mind, that the witness subscribed his name thereto in the presence of the testator; the testimony so taken, shall have the same force as if taken before the clerk or court.

SEC. 20. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwriting of the testator, and of the witnesses dead, insane, or residence unknown, and of such other circumstances, as would be sufficient to prove such will on a trial at common law.

SEC. 21. If it shall appear to the satisfaction of the court or clerk, that all the subscribing witnesses are dead, insane, or their residence unknown; the court or clerk shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will in a trial at law.

SEC. 22. All the testimony adduced in support of any will, shall be reduced to writing, signed by the witnesses, and certified by the clerk.

SEC. 23. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars; nor unless the same be proven by two witnesses, who were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid some person present, to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

SEC. 24. Any mariner at sea, or soldier in the military service, may dispose of his wages, or other personal property, as he might have done by the common law, or by reducing the same to writing.

SEC. 25. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

SEC. 26. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the probate of such will if they think proper.

SEC. 27. All wills shall be recorded by the clerk of the Probate Court, in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed in his office.

SEC. 28. Every will proved according to the provisions of this act, recorded and certified by the clerk of the Probate Court, and attested by his seal of office, may be read as evidence, without any further proof thereof.

SEC. 29. The record of any will, made, proved, and recorded, as aforesaid, and the exemplification of such record by the clerk of the Probate Court, in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases, as the original would be if produced and proved, and may in like manner be repelled by contrary proof.

SEC. 30. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the recorder's office in such county, within six months after probate.

SEC. 31. If any person interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and by petition to the District Court of the county, contest the validity of the will, or pray to have the will proved, which has been rejected; an issue shall be made up whether the writing produced be the will of the testator or not, which shall be tried by a jury, or if neither party require a jury, by the court.

SEC. 32. The verdict of the jury, or the finding and judgment of the court, shall be final, saving to the court the right of granting a new trial as in other cases, and to either party, an appeal in matters of law to the Supreme Court.

SEC. 33. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of five years after their respective disabilities are removed.

SEC. 34. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, shall be administered as evidence, and have such weight as the court or jury thinks it deserves.

SEC. 35. Any person owning real or personal estate in this Territory, may devise or bequeath such property by last will, executed and proved, if real estate be devised according to the laws of this Territory, or if personal estate be bequeathed according to the laws of this Territory, or of the country, State, or Territory in which the will shall be proved.

SEC. 36. Authentical copies of such will, and the probate thereof, shall be recorded in the same manner as wills executed and proved in this Territory, and shall be admitted in evidence in the same manner, and with like effect.

SEC 37. Any such will may be contested and annulled within the same time, and in the same manner, as wills executed and proved in this Territory.

SEC. 38. If any person has attested, or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate, other than, or except charges in lands, tenements, or hereditaments, for the payment of any debt or debts, shall be thereby given or made; such devise, legacy, estate, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

SEC. 39. If such witness would be entitled to any share of the testator's estate in case the will should not be established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

SEC. 40. If the execution of such will be attested by a sufficient number of other competent witnesses as required by this act, then such devise, legacy, estate, interest, gift, or appointment, shall be valid.

SEC. 41. If by any will, any real estate be charged with any debt, any creditor, whose debt is so charged, has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

SEC. 42. If any person has attested, or shall attest the execution of any will, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest upon tender thereof, such person shall be admitted as a witness to the execution of such will.

SEC. 43. The credit of such witness shall be subject to the consideration of the court or jury.

SEC. 44. If any legatee or devisee who has attested, or shall attest the execution of any will, shall have died, or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, on tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

SEC. 45. No person to whom any estate, gift, or appointment, shall be given or made, which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest, on tender made; and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in the thirty-ninth section, any profit of, or any benefit of, or from any such estate, interest, gift, or appointment, so given or made to him, by any such will, or demand, receive or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

SEC. 46. If any person by last will, devise any real estate to any person, for the term of such person's life, and after his or her death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

SEC. 47. In all devises of lands or other estate in this Territory in which the words "heirs and assigns," or "heirs and assigns for ever," are omitted, and no expressions are contained in such will, whereby it shall appear that such devise was intended to convey an estate for life only, and no further devise be made of the devised premises, to take effect after the death of the devisee to whom the same shall be given; it shall be understood to be the intention of the testator, thereby to devise an absolute estate in the same, and shall convey an estate in fee simple to the devisee for all such devised premises.

SEC. 48. When any testator in his last will, shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs, shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

SEC. 49. When any devisees, legatees, or heirs shall be required to refund any part of the estate received by them for the purpose of making up the share, devise, or legacy of any other devisee, legatee, or heir; the District Court shall, upon petition of the party entitled to such contribution, order distribution of such estate according to equity, and enforce such orders with like effect, as decrees of courts of equity.

SEC. 50. The term "will," as used in this act, shall be so construed as to include all codicils, as well as wills.

SEC. 51. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true interests and meaning of the testator in all matters brought before them.

SEC. 52. If the Probate Court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate; such court shall have power to summon such person, and to compel him by attachment to produce the same.

Passed, September 26th, 1849.

SECRETARY'S OFFICE,
OREGON CITY, April 2, 1851.

I certify that the foregoing Acts are true copies of the original rolls on file in my office.

E. HAMILTON,
SECRETARY OF OREGON TERRITORY.

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